DECISIVE BATTLES OF THE LAW

FREDERICK TREVOR HILL

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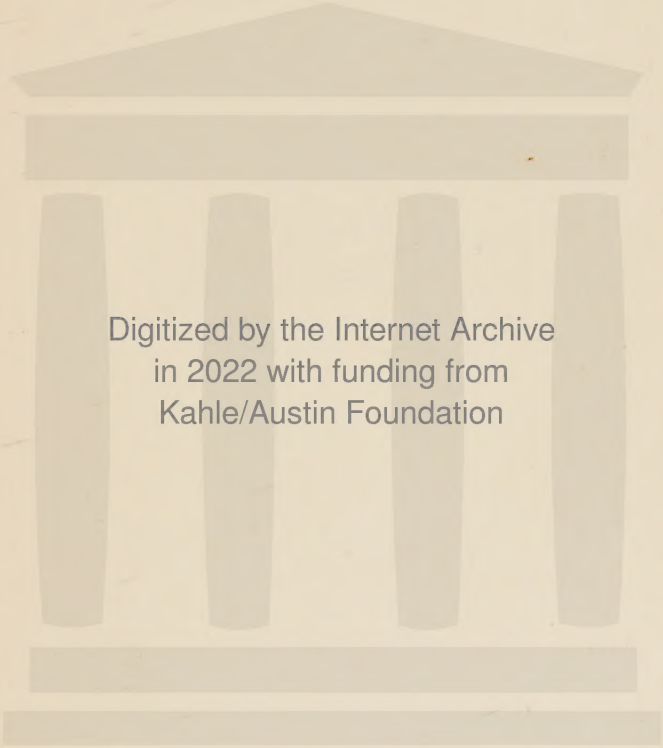

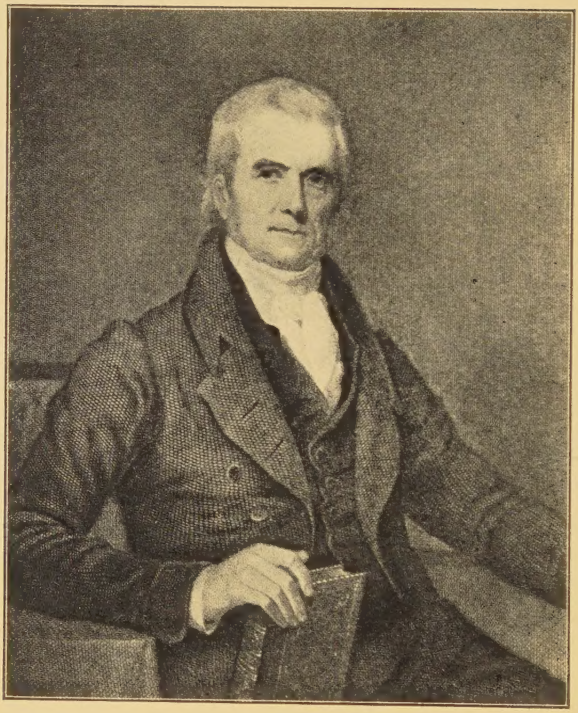

J. Marshall

DECISIVE BATTLES OF THE LAW

NARRATIVE STUDIES OF EIGHT LEGAL CONTESTS AFFECTING THE HISTORY OF THE UNITED STATES BETWEEN THE YEARS 1800 AND 1886

BY

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"LINCOLN THE LAWYER" "THE ACCOMPLICE"
"THE CASE AND EXCEPTIONS" ETC.

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TO
CAROLINE COE

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FOREWORD AND ACKNOWLEDGMENT

IT is a recognized fact that great legal contests have not infrequently foreshadowed national crises in the United States, and sometimes even determined them. Certainly the records of the courts afford most illuminating foot-notes to history, often revealing the political and human forces at work upon events in more dramatic and vivid guise than any other medium. Something of their significance is lost, however, in the dull, official form of a law report. No such account of a trial can convey any suggestion of the surroundings or attendant circumstances that give life, character, color, and meaning to the proceedings. To be appreciated at its full historic value, the scene must be vitalized and peopled with the human beings that dominated it. The judge, the jury, the witnesses, the lawyers, the laymen—all the court-room crowd must be seen in action, moulding the event, and the listening spectator must be so

in touch with the history and spirit of the times as to understand every move of the *dramatis personæ*.

It is to approximate this effect that these narrative studies have been undertaken.

The writer gratefully acknowledges his indebtedness to all the historians and biographers whose researches have aided him in accurately reproducing the scenes herein depicted.

For valuable information concerning the trial of John Brown, he begs to thank Messrs. Thomas H. Botts and Thomas C. Green (sons of the counsel who conducted the defence), as well as Dr. W. P. McGuire, executor of Judge Parker, who presided at the trial, and Mr. Frank B. Sanborn, Brown's intimate friend and biographer.

He is likewise greatly indebted to Messrs. Brooks Adams, Frank W. Hackett, and the Honorable J. C. Bancroft Davis, the only surviving representatives of the United States at the Geneva arbitration, for information concerning the *Alabama* case; and to the Honorable Elihu Root and the officials of the State Department for access to the official records in Washington, concerning the same.

To Captain William P. Black and Messrs. Sig-

mund Zeisler and William A. Foster, of counsel for the Chicago anarchists, and Francis W. Walker, the last surviving member of the prosecutor's staff, he desires to express his thanks for material assistance in presenting the court-room scene in the People *vs.* Spies.

He also takes pleasure in recording his appreciation of the efficient assistance of the late Miss Mary Louise Dalton, Librarian of the Missouri Historical Society, in facilitating the original investigations which form the basis of the article on the Dred Scott case, and the co-operation of Montgomery Blair, Esq., who courteously loaned to the writer unpublished autograph letters bearing upon his father's share in that famous litigation.

For this generous, expert assistance in preparing the volume for the press, the writer is, on this as on many other occasions, deeply indebted to Mr. Samuel Palmer Griffin.

DECISIVE BATTLES OF THE LAW

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I

THE UNITED STATES *vs.* CALLENDER: A FIGHT FOR FREEDOM OF THE PRESS

EARLY in the morning of June 3, 1800, a number of horsemen could be seen straggling along the rough country roads towards Richmond, each encircled in a little cloud of dust. Here and there the riders joined forces, jogging together past the scattered plantations on to the outskirts of the town, and then threading their way more carefully through the narrow, ill-made streets of the capital, until they reached the Common, whose deep ravines, covered with stunted pines, necessitated a still more cautious approach.

All the travellers were evidently bent upon

the same errand, for they halted at a building before which a dozen or more men were already assembled, and, having dismounted and tied their horses to the hitching-rails, mingled with the earlier arrivals. It was a picturesque gathering of Virginians that awaited the opening of the United States Circuit Court on that summer morning, for the ugly fashions of the French Revolution had not as yet found much favor in the Old Dominion, and knee-breeches, low shoes, buckles, buttons, and queues tied with ribbons were still in vogue. And yet it was not their dress, but their faces and bearing, which particularly distinguished these gentlemen as they stood talking with one another under the wide-spreading trees at the edge of the public square. Many of them were clothed like English farmers, but they wore their dusty garments with an unmistakable air of distinction, and their clean-shaven, clear-cut features bespoke dignity and intelligence. The centre of one group was especially notable, his strong and somewhat stern face indicating character in every line, and the ease with which he held his auditors singled him out as a master of men. This was John Marshall, diplomat and jurist, and soon to become the official chief of the hated

judge whose official programme was summoning all the country-side. In another group near Marshall stood a handsome, neatly dressed man about thirty years of age, tall, well-formed, and graceful, with a hearty laugh and a confident manner that seemed to fascinate those about him, particularly one keen, boyish-looking listener who hung upon his every word, for William Wirt was already the beau-ideal of the junior bar, and Philip Nicholas had reason to felicitate himself on being associated with such a rising young advocate. In this same group stood George Hay, soon to become one of the best-known lawyers in the country, and beside him stood the distinguished leader of the Virginia bar, Edmund Randolph.

All these men were to meet again at the same place under very different conditions to conduct one of the most famous trials in American history, but for the time being all professional and political differences were merged in their loyalty to the Virginia bar, whose dignity and influence bade fair to be seriously affected in the trial of James Thompson Callender for seditious libel against the President of the United States. There was no wide-spread popular sympathy with this editor of the *Richmond Examiner*, and

no particular interest among the best citizens concerning his individual fate. He was a brilliant, drunken, fearless, mercenary product of Grub Street, whose scurrilous pen was at the service of the highest bidder and whose libels were produced to order. In such a hireling neither patron nor opponent could manifest any very deep concern. He received his price and took his chances, and under ordinary circumstances no one would probably have raised a finger in his behalf. The circumstances, however, were not ordinary, but most extraordinary, for the law invoked against Callender for the publication of his libelous pamphlet, "The Prospect Before Us," was the odious Sedition Act, the passage of which (together with the Alien Law) had aroused such deep resentment throughout the country that Kentucky had protested in a set of defiant resolutions, declaring it null and void within her borders and inviting the other States to join her in seceding from the Union. This invitation had met with a decided rebuff from all the legislatures addressed save that of Virginia, which had responded with another set of resolutions expressing devoted attachment to the Union, but heartily joining in Kentucky's condemnation of the law as a

dangerous menace to the freedom of the press and an outrageous breach of the liberties guaranteed by the Constitution.

Under the provisions of this law, any one who wrote, printed, uttered, or published any false, scandalous, or malicious matter against the government, the Congress, or the President of the United States, or which tended to bring them into hatred or contempt, could be punished by heavy fines and imprisonment, and the statute was so worded as to penalize, not only honest criticism of the Executive, but even the free expression of opinion. No legislation more fatal to the popularity of Adams's administration could possibly have been devised; but although the sole responsibility for its enactment has frequently been charged to the President, it cannot justly be laid at his door. His fussy, sensitive, conscientious, crotchety, tactless nature had doubtless been more stung by the lampoons and critical attacks of the pamphlets and newspapers than that of any other official, but the abuse of the press had been so general that scarcely a man in public life had escaped defamation, and the Act had been rushed through both houses of Congress by a vote which distinctly stamped it

with the approval of the whole administration party.

That this was the first law passed by the national legislature against the freedom of the press, and that its enforcement in Virginia threatened to provoke a conflict between the state and the Federal authorities, possibly involving the stability of the Union, was quite sufficient to arouse unprecedented interest in Callender's case, for these facts indicated a cause of vital importance, which bade fair to result in the first State trial upon record in the Commonwealth. Nevertheless, it was not these momentous issues that attracted the majority of the legal profession, but rather the personality of the judge who proposed to try the case, for His Honor was probably the most violent, the most feared and best-hated partisan who ever sat upon the Federal bench.

It was not in his judicial capacity alone that Samuel Chase had earned his reputation. For years he had been known as a pugnacious lawyer and politician who sought quarrels and delighted in them. Indeed, his entire career had been marked by such intemperance of word and action that he seemed "to move perpetually with a mob at his heels," which sometimes pursued

but quite as often followed him. In the stirring days preceding the Revolution he had been one of the "Sons of Liberty" who had attacked the public offices of Baltimore during the Stamp Act, and later he and his band had actually compelled a group of old malcontents, including his own father, to take the oath of allegiance to the Continental Congress. Nor were these the only manifestations of such playfulness credited to his account, for when certain Pennsylvanian Quakers had refused to illuminate their houses in honor of a Revolutionary success, he had swooped upon the offending citizens with his followers, bundled them into carts, and deported them in the depth of winter to Virginia, where they were unceremoniously deposited and left to shift for themselves.

All this youthful boisterousness, however, would probably have been attributed to exuberant vitality and misdirected zeal had not his conduct as a member of the Maryland Colonial Legislature and the Continental Congress been almost equally turbulent and provocative of riot. The man was, however, an incorrigible bully, with a genius for offence, and when at the close of the war he found himself a member of the Maryland House of Delegates, he straightway became

involved in political broils which resulted in an attempt at his impeachment. But here his fighting qualities stood him in good stead, for he not only fought his enemies to a stand-still, but had himself rewarded, first with the Chief-Justiceship of the Criminal Court of Baltimore, and then with the Chief-Justiceship of the General Court, both of which offices he tenaciously held and administered in flagrant defiance of the law, until his action was officially declared unconstitutional. Nevertheless, his name was writ large in the Declaration of Independence, his personal honesty, courage, and patriotism were unquestioned, and though he had at first opposed the Constitution, he had become in course of time the most ardent of Federal enthusiasts.

Such was the man whom Washington had appointed to the Federal bench in 1796, and there was to be nothing in his conduct of that office to belie his previous record. Domineering, fearless, vain, confident, and honest, he had many of the qualities necessary to establish the authority of the new court, but no one did more than he to make his tribunal obnoxious to the bar. With a good classical education and considerable experience and ability as a lawyer, he had the majority of the attorneys who practised

before him at a distinct disadvantage, and those whom he could not unhorse with legal learning he cowed and silenced with jocular or brutal tyranny, as best suited his humor. But perhaps his gravest offence was his political activity, with which he never allowed his judicial duties to interfere, and he had not been long upon the circuit before angry outcries were raised against his aggressive Federal partisanship. Opposition of this character, however, merely excited his belligerency, and he never made the slightest effort to conceal his political opinions, either on or off the bench. Indeed, when the Sedition Act became a law, he had openly rejoiced at the opportunity it afforded for silencing critics of the administration, and his actions were soon to speak louder than words. During the trial of Fries, his arbitrary rulings practically forced the prisoner's counsel to retire from the case in disgust, and when Thomas Cooper, member of the Pennsylvania bar, convicted of libeling the President, was arraigned for sentence, he announced in open court that if he could discover that the Democratic party was behind the prisoner he would inflict the severest penalties known to the law.

It is not surprising, therefore, that the most

alarming rumors of this judicial tyrant's programme for Virginia found willing ears in Richmond when he descended upon the town with Luther Martin's marked copy of "The Prospect Before Us" in his avenging hand. That he had publicly exhibited this libelous pamphlet to various persons and expressed his determination to punish its author was a matter of common knowledge, but the story that he had instructed the marshal to see that "none of those creatures called Democrats" was summoned on the grand jury found quite as many believers. Moreover, rumor had it that on being informed that the leaders of the Richmond bar had volunteered to appear for Callender and test the constitutionality of the law, he had retorted, with a coarse laugh, that he'd put the whole lot of them over his knee and teach them and all such nullifiers a lesson they would not soon forget, and it must be confessed that the thought of the learned profession in this undignified posture appealed to the popular humor and lent an added significance to "The Prospect Before Us."

The threatened clash between the bench and bar was, of course, particularly interesting to lawyers, but there were many laymen among those gathered before the court-house on the

morning of the trial, for the country was thoroughly aroused over the attempt to enforce the Sedition Law within a State whose legislature had officially condemned it, and the conflict between the Federal and State authorities was far more important to the average Virginian than the settlement of any professional differences. Not all the horsemen who came trailing across the Common were present from choice, however, for the marshal had invaded the most distant plantations in his search for jurors, and some of the victims had ridden ten, fifteen, and even twenty miles in obedience to his summons, spreading the news of the impending event through the outlying districts until the rapidly gathering crowd promised to surpass that of any previous court day in Richmond. Nevertheless, no one of the waiting throng seemed to be in any haste to move in-doors, and jurors, witnesses, spectators, and lawyers remained clustered about the entrance or scattered along the edge of the Common, discussing the case until nearly ten o'clock, when they slowly moved towards the scene of action, and a few minutes later filled the court-room to overflowing.

At a table beside the judicial desk sat William Marshall, clerk of the court and brother of the

future Chief-Justice, and near him stood Mr. Nelson, the District Attorney, with David Robertson, the short-hand reporter, whose notes were to prove an invaluable exhibit in the subsequent impeachment of the judge. The attention of the audience, however, was mainly directed to the prisoner, his bondsman, Meriwether Jones, and his counsel, Messrs. Hay, Wirt, and Nicholas, a formidable array for any hostile judge, and a trio with whom the bar of Richmond were well content to trust their dignity and honor. Indeed, these champions had already given Chase a taste of their quality by virtually forcing him to grant adjournments on two previous occasions, and it was whispered that they intended to manœuvre him out of the case altogether by continuing their dilatory tactics until the term expired. In fact, the word passed from lip to lip across the crowded chamber that the judge had walked into a very neat trap at the last hearing by granting an adjournment to procure the attendance of a certain witness named Giles. This, it was claimed, was a fatal concession, for if the non-appearance of this witness justified a postponement on Monday, it equally demanded it on Tuesday, for he was still missing, and the case could not therefore

be tried until he was produced, which would be the day after never.

The audience chuckled approvingly as this story went the rounds, gleefully anticipating the discomfiture of the judge, and the general opinion was that, for once, at least, Chase had met his match—a result particularly agreeable to local pride. Judicial tyrants might bully and awe the Pennsylvania or Maryland bar, but the profession in Virginia knew a trick of two which would—

The chatter and laughter suddenly ceased as the door opened, disclosing the not too heroic figure of the District Judge, Cyrus Griffin, a rather futile, colorless, and timid personage, who appeared to be propelled into the room by a burly, bustling, red-faced man who strode rapidly to the bench, nodding an ungracious salutation at the assemblage, while the court crier bellowed his familiar announcement.

The individual whose arrival had had the effect of a school-master entering a noisy classroom was a man of about sixty years of age, huge of bulk, coarse of feature, masterful in manner. On his massive head sat an ill-made wig, and his garments were those of the ordinary citizen with no particular regard for appearances, but there was no mistaking his authorita-

tive bearing as he loomed up behind the judicial desk and glowered at the silent audience. To most of those who returned his scrutiny he was an entire stranger, for until the present term of the court he had never set foot in Richmond, and doubtless many of the spectators were prepared to find him a fiend in human shape. But though his expression was somewhat forbidding, his large, strong, clean-shaven face was not uncomely, and his giant frame suggested strength rather than brutality. Nevertheless, his small, snappy, shifty eyes had a dangerous glint, and there were ominous lines about the corners of his mouth, betraying possibilities of an ugly droop, and other indications of a quarrelsome disposition were not wanting. The whole aspect of the man, however, suggested energy and determination, rather than intellectual power, and, contrasted with the group of lawyers who faced him, he appeared at a disadvantage. But the moment the proceedings opened this impression faded, and as he leaned over the desk and listened to Mr. Hay's long and not too ingenious plea for an adjournment, his gaze was so uncomfortably intelligent that the speaker, obviously embarrassed, made poor work of his argument. Still, no interruption

reached him from the bench, and, growing more confident, the advocate began to shift away from the question of the missing witness, craftily turning the discussion towards the constitutionality of the Sedition Act. Then he circled back to the witness whose testimony he boldly asserted would help to determine whether Callender's pamphlet consisted of libelous statements or merely matters of opinion, which question he declared would have to be considered by the jury in assessing the fine.

"*That's a wild notion!* It's not the law. The jury have nothing to do with assessing the fine, sir!"

If some one had suddenly dashed water in Hay's face he could scarcely have been more astonished. To be flatly contradicted on a legal question was ruffling enough to a man of his dignity, but to have his opinion derided as *a wild notion* was too insulting for words, and some moments elapsed before he recovered himself sufficiently to retort. Then he announced with dignified severity that it was possible to answer *argument*, but quite impossible to refute *authority*. If he were permitted to proceed, however—

But he was not permitted to proceed. A blow

had been given and returned, and the battle was now for the strong. His Honor did not propose to listen to any arguments regarding the constitutionality of the law, and if the counsel imagined that the court was bound to keep on granting adjournments until the missing witness, Giles, was produced, he was mightily mistaken. In the court's opinion, if the trial had to await that gentleman's appearance, it would never take place at all. There had been ample opportunity to compel his attendance. Let the jury be impanelled at once!

Startled and chagrined as the counsel were by this unexpected turn of affairs, which completely upset their well-laid plans, they were still more disconcerted by the overbearing manner and tone which had been adopted towards them, and, tingling with resentment, they announced that since His Honor saw fit to force an immediate trial upon them, it would be their duty to take advantage of every technicality known to the law, which, to a man of Chase's temperament, was nothing more or less than an open declaration of war. Indeed, the very next move demonstrated the tactlessness of such a defiance, for the moment young Nicholas advanced a formidable challenge to the entire

panel of jurors, which, despite the extraordinary exertions of the marshal, comprised only eight candidates, he was flouted and routed with a finality that not only overruled his objections, but cast serious aspersions on his legal attainments. Seeing the junior counsel thus hurried and dragged over his own obstacles, Mr. Hay promptly came to the rescue by proposing to examine the jurors individually as to any prejudices they might entertain against the accused; but before he could frame his opening question he was roughly interrupted from the bench. No questions could be asked of the jurors, he was informed, save such as were first reduced to writing and submitted for the approval of the court.

For a moment the three lawyers stared at the bench in speechless amazement, and then burst into angry protest. It was absolutely futile, however, to attempt to swerve Chase from this extraordinary course, and when the exhausted attorneys finally yielded and submitted written questions for the jurors, their interrogatories were declared improper and rejected forthwith. According to the court, it did not make any difference if a talesman had read and formed an unfavorable opinion of "The Prospect Before

Us." He was still eligible for the jury provided he had not formed an opinion concerning the charge on which the prisoner was indicted, and as none of the candidates had read the indictment, they were all qualified to serve on the case. In the face of these unheard-of rulings, the Virginian lawyers apparently abandoned all hope of securing an impartial jury, for when one of the talesmen, a conscientious planter by the name of Basset, volunteered the information that he had read Callender's tract and had formed a positive opinion that it came under the Sedition Law, they failed to record any objection to his retention.

Having herded the jurors into the box in this peremptory fashion, Chase was now ready to try the case, and directing the District Attorney to proceed, he calmly settled back while that official described the enormity of the prisoner's crime to the eight men intrusted with his fate. Only certain portions of the offending pamphlet had been recited in the indictment, and they made rather mild reading, even at that time, while in these days they would scarcely be regarded as sensational, to say nothing of criminal. Nevertheless, they were clearly within the provisions of the Sedition Law, and proof of their

authorship was practically all the prosecutor needed to complete his case. This was easily established by the testimony of the printers who had put the manuscript into type and the booksellers who had sold it as a pamphlet, and when Hay protested that those men could not be compelled to answer the questions put to them, they being accomplices equally guilty under the law, and privileged from testifying against themselves, the court not only overruled his objections, but virtually promised the hesitating witnesses immunity as a reward for their confessions. Indeed, it was said that Chase frequently identified himself with the prosecution in this and other ways, even using the word "we" to indicate a common purpose between the District Attorney and himself.

Having succeeded in proving that the prisoner was the author of "The Prospect Before Us," the prosecutor next attempted to introduce the whole pamphlet in evidence, but here the defence again protested, claiming that only those portions of the document which were recited in the indictment could be considered by the jury, especially in view of the court's decision that the jurors were concerned only with the offence charged in the official papers and were not dis-

qualified by their prejudices against the pamphlet as a whole. Chase was in no mood, however, to allow his previous rulings to be turned against him. The prisoner was being tried for writing "The Prospect Before Us," and he was not to escape punishment because only mild selections from it appeared in the indictment. A little informality of that sort was best rectified by allowing the jury to read the whole pernicious production. In vain Hay protested against this illogical and injurious action. He was interrupted and contradicted, hurried, harried, and baited until the whole room roared with laughter, for nothing is so infectious as the wit of the bench on which a bully sits enthroned.

The prosecution practically ended with this exhibition of judicial tyranny, and the defence was immediately instructed to proceed. Unprepared as they were to dispute the authorship or publication of the pamphlet, the counsel still had a chance of influencing the jury by proving the truth of its statements, and to that end they called a well-known citizen named Colonel Taylor, to the stand. Before he could utter a word, however, the judge interrupted, declaring that every question put to him must be first examined

and approved by the court. This preposterous order fairly staggered the indignant counsel. They had submitted when forced to conduct the examination of the jury in this fashion, but to be similarly hampered in questioning their own witness was an imposition unheard of in any court of law, and they remonstrated in no uncertain terms.

Neither protest nor argument nor authority, however, had the slightest effect upon the judge, and after a fierce controversy the attorneys abandoned their struggle, only to discover that Chase would admit no testimony that did not prove the truth of the whole paragraph complained of in the indictment. Struggling to conceal their exasperation, they protested that one witness might prove the correctness of one statement in the pamphlet, and another another, and that no one individual could be expected to substantiate the whole of it, and at last Chase was compelled to go through the empty form of consulting the District Judge. That shadowy official, however, meekly concurred in the views of his superior, and, finding himself supported, His Honor attempted to put an end to the discussion. But the fighting blood of the Virginian attorneys was now thoroughly aroused, and, re-

fusing to be silenced, they pressed their contentions with a force that lashed Chase into a rage, and the bitter wrangle which ensued soon had the room in an uproar. Contemptuously referred to as "you young gentlemen," and goaded by every public slight and sneer which brutal authority could inflict upon them, the three lawyers, nevertheless, stood their ground, insisting that the rulings of the court were equivalent to a complete denial of justice, and virtually defying the bench. Finally the judge made a pretence of requesting the District Attorney to allow the questions upon which "the young gentlemen were so insistent," and when he prudently declined the magistrate brought the matter to a close by hammering his opponents to their seats.

With this final suppression of their only available testimony, the defence had no recourse but to address the jury and endeavor to take advantage of the existing prejudice against the Sedition Law. Wirt led this forlorn hope, but the moment he began to argue against the constitutionality of the law he was unceremoniously halted and informed that the jury would not be permitted to consider any question of that kind. The jurors were the judges of the facts, and not of the law, declared the court — a proposition

which, under ordinary circumstances, no lawyer would have endeavored to dispute. Wirt, however, intimated that the court had suppressed the facts, and that he was therefore reduced to the necessity of discussing the law. Interrupted and told not to reflect on the court, he retorted with a repetition of his statement in another form, and for a perilous moment the two men faced each other, speechless with rage, while the frightened audience watched them in fascinated silence.

Then the intrepid Virginian again turned slowly to the jury and resumed his argument, attacking the law with studious disregard of the official mandate. With a roar of anger Chase ordered him to his seat, and as he quietly obeyed, the man on the bench launched into a frenzied tirade.

"Hear my words!" he ranted. "I wish the world to know them! My opinion is the result of mature deliberation!"

He then reiterated with increasing violence that the facts were for the jury and the law for the court, an elemental principle of which the world had been previously informed and of which no one was better advised than the experienced lawyers he was instructing. The tables were now turned, however, and it was the judge

and not the counsel who was being baited. Indeed, Chase had no sooner concluded his pompous proclamation than Wirt once more turned to the jury, and, quoting directly from the third section of the Sedition Act, which provided that the jury "should determine the law and the fact under the direction of the court, as in other cases," calmly proceeded to discuss the forbidden subject. The Constitution was the law, he declared, and as the jury had a right to determine the law, they had logically the right to consider the Constitution.

"A non sequitur, sir!" shouted Chase, and the audience roared; whereupon Wirt sat down in disgust and Nicholas took up the same line of argument until he was virtually smothered by interruptions from the bench. Then Hay resumed the attack, but by this time the judge had worked himself into a fury, and the senior counsel, flatly contradicted, badgered, and insulted almost every time he opened his lips, suddenly brought the unseemly contest to a close by taking his seat and gathering up his papers.

For a few moments the angry magistrate did not apparently comprehend what was happening, but as Hay's associates followed his example

and began packing up their books and documents, the situation slowly dawned upon him and for the first time he seemed to realize that he had perhaps carried matters beyond the point of safety. The retirement of the lawyers in the Fries case had not troubled him in the least, but the repetition of that rebuke at the hands of the Virginia bar might, he well understood, be fraught with much more serious consequences; and when Hay rose and turned towards the door, he addressed him with surprising deference.

"Please to proceed, sir," he requested, "and be assured that you will not again be interrupted by me. Say what you will."

The senior counsel, however, vouchsafed no response to these advances, and, amid intense silence, he and his associates walked gravely to the rear of the room.

There was something unmistakably ominous in their quiet dignity and bearing, and the judicial tyrant was now thoroughly alarmed.

"I think it right to interrupt counsel when mistaken in the law," he protested. "Yet I do not mean to interrupt improperly. There is no reason to be captious."

Receiving no reply to this apologetic utterance, the speaker's red face assumed a purple

hue, and his vindictive little eyes, following the retreating figures, glittered with rage. Finally, as the door opened, he half rose from his chair, and roaring, "As you please, sirs!" turned to the jury and began a long and careful charge.

Two hours later a verdict of guilty was recorded, and the prisoner sentenced to nine months' imprisonment and a fine of two hundred dollars, and required to find sureties for good behavior for a period of two years.

Thus closed the last case ever tried under the Sedition Law, but it was fated to be heard of again. From his cell in the Richmond jail the prisoner continued to issue his libels until Jefferson pardoned him, only to be rewarded by venomous attacks from his pen, after the hated act had been repealed; and five years later Chase was impeached before the Senate for oppressive and vexatious conduct during the trial, and indecent solicitude for the conviction of the accused. Politics and Luther Martin, however, interfered in his behalf, and after a brilliant defence at the hands of the lawyer for whose support in his last illness the Maryland legislature taxed all members of the bar, he was acquitted, and resumed his duties without ever again repeating the offences for which he had been arraigned.

II

THE UNITED STATES *vs.* BURR: THE INSIDE HISTORY OF A "SCOTCH" VERDICT

FOR fifty years after his downfall Aaron Burr was practically without defenders, but during the last half-century a small army of champions has espoused his cause, and of late his adherents have been so aggressively zealous that more heads than lances have been broken in his defence. His partisans are no longer satisfied with rescuing their hero from the national pillory, but insist upon providing a victim in his place and stead. Some of them have nominated General Wilkinson for the vacancy, arraigning him as a villain of the most despicable stripe; others have attacked Jefferson as a persecutor of incredible malignity, and all of them have been carried far afield, to the confusion of the issues and the injury of their cause.

But despite the extravagant claims and

counter-claims by which the enthusiasts have prejudiced their campaign, a vast amount of important information has been laid before the public, and in the light of this newly discovered evidence Burr is clearly entitled to a complete rehearing of the trial which is generally supposed to have demonstrated his traitorous guilt.

The history of this *cause célèbre* is embodied in two musty legal tomes of more than eleven hundred wretchedly printed pages. But beneath their dry and technical exterior there lies a dramatic story replete with human interest and historical significance, and it is fortunate for Burr that this uninviting record is so exhaustive in its scope. No other cause in the early history of American courts is reported with equal care; but extraordinary efforts were made to secure this result, for Jefferson and his advisers, realizing that the prosecution of an ex-vice-president might easily become a dangerous political issue, determined to put themselves squarely upon record with a faithful transcript of all the proceedings, and it is safe to assume that they took every other precaution to strengthen the government's case and secure the defendant's conviction.

It is reasonably certain, then, that these

formidable volumes contain *every scintilla of competent evidence that could be procured against Burr at a time when the events were fresh in the witnesses' minds*, and as no testimony was submitted in his defence, one would not expect to find much material for his vindication in such a record. Strange as it may seem, however, this unpromising official report presents a stronger case for Burr than all the briefs and special pleadings of his zealous partisans, and the explanation of this anomaly involves the history of his extraordinary trial.

All roads in the United States led to Richmond in the summer of 1807, and all news of national importance dated from the Virginian capital. As early as May of that year the city was swarming with strangers of every sort and condition, from the most eminent citizens to the wildest adventurers, and expectant throngs hung about the streets at all hours of the day and night, frequently in the mood for mischief. It was at one of these moments that a loud-voiced orator mounted the steps of a corner grocery and began to address the bystanders. His gusty eloquence and unbridled tongue instantly caught the fancy of his auditors, but

hisses as well as cheers greeted his fiery periods, and the noise attracted the attention of a distinguished citizen, who stopped to inquire the cause of the disturbance.

"Oh, it's a great blackguard from Tennessee, named Andrew Jackson, making a speech for Burr and damning Jefferson as a persecutor," was the answer, and the respectable gentleman hurried on out of hearing across the court-house green.

It is possible that Jackson championed Burr's cause for its own sake, for he had had personal dealings with the accused which qualified him to speak with authority, but most of the politicians who supported their former leader did so not because they loved or believed in him, but because they hated and distrusted Jefferson. The general public, however, had no interest in the defendant save to see him hanged; and the men in the street, having already convicted him by common consent, merely regarded his trial as a spectacular formality enabling them to be in at the death.

Still, the little city of six thousand inhabitants sheltered many intelligent people to whom Aaron Burr ever remained the great man, gifted, mysterious, and fascinatingly terrible, and

those who came into close contact with him almost invariably surrendered to his personal charm. Even to his jailer he was the Grand Seigneur whose rights there was none to dispute.

"I hope, sir," ventured that official at their first encounter, "that it would not be disagreeable to you if I should lock this door after dark?"

"By no means," graciously returned the prisoner. "I should prefer it to keep out intruders."

"It is our custom, sir," continued the turnkey, "to extinguish all lights at nine o'clock. I hope, sir, you will have no objection to conform to that."

"That, sir," answered Burr, "I am sorry to say is impossible, for I never go to bed until twelve and always burn two candles."

"Very well, sir—just as you please," agreed the jailer. "I should have been glad if it had been otherwise; but as you please, sir."

This was the man whose trial had attracted the vast assemblage to Richmond—a man known from one end of the country to the other as a gallant soldier of the Revolution, a famous lawyer, a shrewd politician, an able United States Senator, a candidate for the

Presidency whose tie vote with Jefferson had been broken only after a bitter struggle, from which he had emerged as vice-president to hound Hamilton into a fatal duel and to entangle himself in a web of conspiracy apparently spun with the threads of treason.

All this, and much more than this, was known to every newspaper reader in the land, and those who had no access to the press were almost as well informed by the current rumors and discussions of the day. The whole country knew that his duel with Hamilton had ostracized Burr from society, and driven him from politics with two indictments for murder hanging over his head and financial ruin staring him in the face, and no argument was needed to persuade the public that a social and political outcast such as he would seek to retrieve his fortunes by some desperate undertaking calculated to satisfy his prodigal ambitions and quench his thirst for revenge. Under such circumstances the man was a suspicious character on general principles, and if an accusation of treason against him needed any other support, the history of the times supplied it. Every one knew that the country had long been on the verge of war with Spain, and that the

Western States had been in an ugly mood at the government's neglect of their demands for the free navigation of the Mississippi and other trading concessions from the Dons. Diplomacy, it is true, had averted actual hostilities, and the commercial grievances had largely disappeared with the purchase of Louisiana from the French, but the fighting blood of the westerners had been aroused, and the treatment they had received from their Spanish neighbors had left them sore and none too pleased with a peaceful solution of the difficulties.

These facts were matters of common knowledge, so when it was asserted that Burr had planned to take advantage of the situation to precipitate a war with Spain, lead the disgruntled States to the redress of their own grievances and the conquest of Spanish provinces, and then to separate them from the Union, the information fell on willing ears. Even after the war-cloud had passed, the scheme did not appear chimerical, for the Spanish possessions still remained as a tempting bait for covetous western eyes, and when it was rumored that Burr had not abandoned his design, but intended to lure the disaffected

States from their allegiance with the conquest of coveted foreign possessions, the accusation had all the force of proof, though details of the nefarious business were not lacking. Burr, it appeared, had acquired an ascendency over Harman Blennerhassett, "the Monte Cristo of the Ohio," and his fabulous fortune had been placed at the disposal of the arch conspirator, who had employed it in building a navy and equipping an army of invasion. It was further explained that operations were to have been begun with a descent on Baton Rouge or New Orleans, where the banks were to have been looted and the enemy furnished with the sinews of war, and that these plans had been frustrated only through the zeal and patriotism of General Wilkinson and the prompt action of the authorities, which had effected the surprise and capture of the insurgent forces with all the chief conspirators.

Such was the story of the plot widely published in the press and confirmed by the government proclamations and the movements of the United States forces under General Wilkinson. This zealous informer, in a fine frenzy of patriotism, had declared martial law in New Orleans at the first sign of danger, and his spec-

tacular efforts to suppress the threatened rebellion caught the popular fancy and made him the man of the hour. As time went on, however, and no sign of disaffection appeared in the States which were supposed to be hot-beds of insurrection, the public soon tired of his turbulent exertions. Moreover, Burr's much-heralded army and navy failed to put in an appearance, and it was subsequently learned that he had never commanded anything but a few flatboats carrying a handful of unarmed men. Finally, when it became rumored that Wilkinson was a pensioner of the Spanish government, troublesome questions began to be asked without answer. How did the General happen to be in the confidence of a traitor? What were his relations with Spain, and what was an officer of the United States army doing with a foreign pension anyway? Had he not compromised himself in some manner, and was he not trying to escape complicity by raising a dust and making much ado about nothing?

The whole affair began to look ridiculous; but the Administration had no intention of being laughed out of court, and at the proper moment it submitted proofs strong enough to silence the most incorrigible doubter. These

were nothing less than the sworn statements of Generals Wilkinson and Eaton, and of Commodore Truxtun, who had apparently been approached by Burr with offers of high command or otherwise tempted to participate in his treason, and these telltale exhibits were published broadcast throughout the land. In the face of such testimony it was no longer possible for any one to dispose of the expedition as a mere filibustering effort against Spain, or to ridicule the Administration's extraordinary zeal. There stood the facts in black and white, revealing as damnable a story of treason as was ever recorded, and the moment this was comprehended there was practically but one opinion of the defendant in the case of the United States *against* Burr.

It is no wonder, then, that an excited multitude stormed the Federal Court for the Fifth Circuit and District of Virginia at Richmond on the morning of August 3d, long before the hour of opening, and that the tipstaves were rushed off their feet in their efforts to guard the doors. Had they been able to announce that the trial would be one of the longest upon record, they might have discouraged the invaders, but as it was they barely succeeded in saving the space

reserved for the contending counsel, leaving the other members of the bar to fight their way in with the crowd, which included Zachary Taylor and Washington Irving, among many others known to fame or destined to become so. A similar crush had occurred when Burr had been indicted, and then Winfield Scott was the only representative of the legal profession who had secured a post of vantage, and he held it solely by virtue of those fighting qualities which subsequently distinguished him in the war with Mexico. Whether or not he was equally successful on this later occasion cannot be demonstrated, but it is certain that when the prisoner appeared in the court-room, accompanied by his son-in-law, the Governor of South Carolina, there was not an inch of standing-room unoccupied, and almost the entire audience was on its feet as he made his impressive entrance.

Always dignified and mindful of personal appearance, Burr had dressed himself with scrupulous care in a becoming suit of black, and his powdered hair, drawn into a queue neatly tied with ribbon, displayed his strong face to the best possible advantage. His remarkable eyes swept slowly and serenely over the hostile spectators, and General Wilkinson was the only

observer who detected any faltering in his gaze. Wilkinson had, however, a better opportunity than any one else for studying the prisoner's countenance, for Burr undoubtedly favored him with more than a passing glance. Indeed, there is evidence that his eyes rested for several moments on his accuser's ruddy countenance, and then travelled down the whole length of his rotund person and up again before they concentrated in a stare which the chief witness for the government afterwards described as terror-stricken, but which was otherwise interpreted by less prejudiced authorities. It is not at all probable, however, that the pensioner of Spain or any other witness would have succeeded in forcing Burr to betray himself. He knew that every eye in the room was focussed upon him, eager to detect a sign of guilt, but the situation had no terrors for a man accustomed to facing public assemblages and swaying them at will. Under some other test it is conceivable that he might have flinched, for in the field of intrigue he had made a sorry exhibition of himself and betrayed his plans at every turn. But in the court-room he was at home again and master of the event, and it was as a lawyer that he coolly surveyed the hostile audience before he turned

and gravely inclined his head towards the judge and assembled counsel.

Chief-Justice John Marshall, the great exponent of the Constitution, whose statue holds a place of honor only second to Washington's at the national Capitol, had been designated to conduct the trial, and by his side sat Cyrus Griffin, the district judge, who may have been an ornament to the bench in every sense of the word, but whose presence on this as on a former occasion was solely ornamental. The Chief Justice had been appointed to the bench as a Federalist, and he was therefore politically opposed to Jefferson, but no more fortunate judicial assignment could have been made for a trial which was to require not only ability and learning, but also courage and originality of a high order. Indeed, no one but a jurist of authority could have commanded the respect of the company gathered at the lawyers' tables, for a more brilliant assemblage of legal talents never graced a court of law.

Edmund Randolph was Burr's senior counsel —a lawyer of national reputation, whose record as Attorney-General and Secretary of State under Washington, and as Attorney-General and Governor of Virginia, well entitled him to

his pre-eminence in the profession. His second-in-command was John Wickham, an Englishman by birth, one of the foremost lawyers in Virginia—a master of wit and sarcasm, and a past-master of strategic wiles; and by his side sat Luther Martin, ex-Attorney-General of Maryland, who knew more law when drunk than most of the bar knew when sober, and who had volunteered his services in sheer hatred of Jefferson and all his works. Coarse, vulgar, gross, and generally under the influence of liquor, this man's mind was still a perfect storehouse of legal precedents, and before the trial ended, his excessive zeal exasperated Jefferson to the point of seriously suggesting his indictment. With this brilliant trio were associated Benjamin Botts, father of John Minor Botts, the distinguished Virginian; Charles Lee, ex-Attorney-General of the United States and member of another distinguished Virginian family; and Jack Baker, a lame man, who played the merry-andrew and kept the audience diverted with his ready wit and good-humor. All of these distinguished counsel represented the accused without accepting compensation of any kind.

To this formidable array of volunteers the government opposed the District-Attorney,

George Hay, son-in-law of James Monroe, the future President, a respectable, zealous, and fairly capable lawyer, but long-winded and without initiative. He was ably seconded, however, by William Wirt, the most promising member of the Richmond bar, a handsome, captivating fellow not over thirty-five years of age, but destined to prove himself worthy of any man's steel; and Alexander MacRae, the crusty, sharp-tempered Lieutenant-Governor of Virginia, an able lawyer of courage and tenacity, was also retained in the government's interests. Neither defence nor prosecution, however, boasted a more formidable advocate than the prisoner himself, and even the Chief Justice was less experienced, for, as President of the Senate, Burr had presided at the impeachment of Judge Samuel Chase—the only cause at all comparable in importance with the case at bar—and his conduct of that historic arraignment had been in every way distinguished. He was not, it is true, the highest type of the profession, but by nature and training he was a power in the courts, and rumor has it that he never lost a case.

Man to man, then, the government was overweighted at the start, but the spectators, anxiously awaiting the opening of hostilities, did not

know this, and it would not have affected their opinion of the outcome if they had been thoroughly informed. The belief in Burr's guilt had become so firmly fixed in the public mind that doubt almost smacked of disloyalty, and it was generally expected that the prosecution would make short work of the defence. The proceedings had no sooner begun, however, than it was demonstrated that the Administration had tried its case in the newspapers not wisely but too well. Only four of the first panel of forty-eight talesmen summoned for jury duty had undecided opinions about Burr, and only one of those four expressed himself as entirely unprejudiced concerning him. The other forty-four were so irreconcilably hostile that the court promptly discharged them, and another panel was summoned. This second lot, however, was worse than the first, and the situation grew more and more serious as the sifting process continued, for one candidate after another expressed open hostility and even hatred for the defendant. At last, when hope of securing an impartial jury had almost faded, a talesman by the name of Morrison took the stand who, it was believed, would prove an exception to the rule. This gentleman had apparently kept an open mind on the sub-

ject of the prisoner's innocence or guilt, and was willing to serve as a juror—almost too willing it seemed to the defence—and Mr. Botts rose to cross-examine.

"Are you a freeholder?" asked the counsel.

"Yes; I have two patents for land," answered the candidate.

"Are you worth three hundred dollars?" continued the examiner.

"Yes," snapped the witness. "I have a horse here worth half of it."

"Have you another at home to make up the other half?" jocosely pursued the attorney, and the audience laughed.

"Yes, four of them!" retorted the talesman, angrily. "I am surprised there should be so much terror of me," he continued, addressing the audience; "but perhaps my *name* may be a terror," he added, his voice rising to a shout, "for my first name is *Hamilton!*"

This "unprejudiced" candidate was then excused, and for fourteen days the weary search continued without success. Not one impartial citizen was discovered in the entire second panel; and at this juncture the proceedings were brought to a stand-still. After some discussion, however, the defence suggested that it be al-

lowed to select any one it chose from the last panel, and the acceptance of this unique proposition paved the way for one of the most startling moves in this extraordinary trial.

Strictly speaking, not one of the proposed jurors was eligible to a seat in the jury-box, but of course some of them were less bitter against the defendant than others, and it was natural to suppose that Burr's advisers would take advantage of that fact and select the best of a bad lot. Nothing so commonplace, however, characterized their plans, and to the utter amazement of all outsiders Burr proceeded to nominate the most objectionable talesmen on the entire list. Inexplicable as this surprising manœuvre must have been to the general public, it was, of course, instantly comprehended by the opposing counsel. Burr and his advisers doubtless reasoned that the safest jurors would be those whose hostility had been most thoroughly exposed. The very fact that he was willing to place his life in the hands of his avowed enemies was, of course, the most eloquent protest of innocence which a prisoner could make. It was a disarming appeal to their honor and fairness, and under ordinary

circumstances this bold, well-planned, and subtle move could not possibly have failed.

Certainly the men selected had made no secret of their feelings towards the accused. Indeed, one of them had openly expressed himself to the effect that Burr ought to be hanged, and another was reported to have said that he had come to Richmond with the express hope of being chosen on the jury, and that if he were fortunate enough to be accepted he would vote to hang the defendant without more ado. This individual subsequently explained that he had uttered this monstrous sentiment in a spirit of levity, but his later conduct illustrated the maxim that there is many a true word spoken in jest. Both he and the other advocate of summary punishment, and others equally unfit, were, nevertheless, gravely sworn in as impartial trial jurors. Some had the decency to protest against their selection, declaring themselves utterly incapable of rendering a fair and impartial verdict, but their excuses were overruled, and when the jury was at last completed it is safe to say that a more hostile array never confronted a prisoner on trial for his life.

The District Attorney then opened for the government with a recital of the facts by which

he intended to prove the prisoner worthy of an ignominious death, and if the audience had not previously been convinced of his guilt they would have been persuaded by the powerful arraignment to which they listened in breathless silence, and doubtless there was a general feeling in the crowded court-room that this furious attack was the beginning of the end.

The moment General Eaton, the first witness, took the stand, however, the prosecution received a sudden and unexpected check. With expectation roused to the highest pitch, and every ear strained to catch the opening questions and answers, Burr's lawyers rose and interposed a preliminary objection. Neither General Eaton nor any other witness could testify as to the defendant's treasonable *intentions*, they contended, until some treasonable *act* of his should be proved. This principle was not new. The rule of law that proof of a killing must precede all other evidence in a murder trial had long been established, but the application of this doctrine to the case at bar interfered with the prosecution's plans, and the counsel for the government were instantly up in arms. Doubtless the lay spectators who watched the fierce skirmish which ensued were

sorely puzzled to understand what it all meant, but the contending forces evidently realized its full importance and a sharp skirmish followed. For a time the prosecution succeeded in maintaining its position, but the attack was persistent, and before night put an end to the conflict the government forces were obliged to yield ground and re-form their lines for a modified campaign. This was so quietly effected that few laymen realized how seriously the prosecution had been damaged, and when General Eaton resumed the witness-chair the next morning no one but the lawyers knew exactly what had happened. The Chief Justice had, however, ruled that the witness might testify as to Burr's intentions to commit the particular acts specifically set forth in the indictment, but that no testimony of general treasonable designs would be received—a distinction with a difference which was to prove increasingly important as the case proceeded.

Eaton's testimony was not apparently affected by the decision. It was, in the main, a repetition of the facts set forth in his published statements detailing Burr's attempts to induce him to accept a military command in the proposed expedition. He had agreed, he

said, to co-operate in the undertaking as long as it was confined to the conquest of Mexico, but when its treasonable nature had been revealed to him, he had repudiated the whole business with scorn and loathing.

It was a smooth, carefully rehearsed, and on the whole a convincing story, and the defence allowed the witness to tell it without objection or interruption of any kind, but not a tone of his voice or an expression of his face escaped the watchful eyes of Burr and his advisers; and when the recital had been brought to a triumphant conclusion, Luther Martin rose slowly from his seat and confronted the accuser. There was a moment's profound silence, and then the attack began.

Had not General Eaton visited the capital shortly after he had learned of the prisoner's treasonable plans? The witness admitted that he had. Well, did he at that time denounce the plot to the authorities? No. Why not, pray? Because he feared to place his testimony against the weight of Mr. Burr's character. Indeed! Well, he *had* held a conference with the President on that occasion concerning Mr. Burr, had he not? Yes. Just what was the nature of that conference? He had urged

the President to appoint Burr to a foreign mission — either Paris, London, or Madrid. What! Impossible! Surely he never could have recommended a man whom he knew to be a traitor to his country for an important post in the country's service? That was utterly incredible! He had done so only to rid the country of a dangerous citizen. Really? So that was his purpose, was it? Had he confided this highly moral argument to the President, or had he sealed it in his patriotic bosom? He had not confided it to the President. Exactly! Well, possibly that was the reason the appointment had not been made![1]

Although the witness had endeavored to forestall these extraordinary admissions in his published affidavit and in his direct examination, their full significance had not been appreciated, and the sensation they produced had scarcely subsided when he was on the rack again—this time with Burr as chief inquisitor.

Had not the witness been attempting for some years to collect a certain claim from the United States government? He had. Well, what was the nature of that claim? It was

[1] The effect and substance of the cross-examination and not the exact questions and answers are here attempted.

for money owed to the witness by the United States government for official expenses in Tripoli. Well, had he not presented that claim to Congress? He had. Did Congress reject or allow it? It did not allow it, eh? Well, was it not true that certain very injurious strictures had been passed upon the conduct of the witness while his claim was under discussion in the House of Representatives? He had been criticised. Unjustly? Of course! But the end of it all was the rejection of the claim, wasn't it? It was not allowed. Well, anyway it wasn't paid, was it? Not then. Not *then?* Then when? Some time ago? About how long since? Was it *before* or *after* the witness swore to the deposition against the prisoner in this case? After. Indeed! Just about how long *after* he signed that widely published document had his claim been adjusted? Three weeks afterwards. Really? Well, what was the sum then paid to him? That was his private concern. No, sir, it was public business! What sum had he so opportunely received from Treasury funds? Ten thousand dollars!

No further questions were necessary to discredit the witness, and if any informer ever left the stand more thoroughly impeached, his testi-

mony has mercifully been omitted from the records. Under ordinary circumstances such testimony would have ruined the prosecution's case; but the times were out of joint for Burr, and probably no exposure of his enemies could have succeeded in reinstating him in the public confidence.

But despite the advantage of their intrenched position the government forces must have been thrown into some confusion by this fiasco, for they placed Commodore Truxtun on the stand, and nothing but excitement and disorder can explain such an egregious blunder. Indeed, after he was called and before he had fairly begun his testimony the District Attorney attempted to withdraw him, but the defence instantly objected, and the mischief was done.

He had been approached by Burr, he asserted, to take charge of a naval expedition against Mexico, but had declined the proposition because the President had not been privy to it. That was all there was to his testimony—not a word about secession or disunion or anything akin to it. In fact, he unequivocally declared that he knew nothing whatsoever concerning any treasonable act on Burr's part! Encouraged by this feeble showing, the defence in-

stantly pressed forward, assuming the offensive.

"Were we not on terms of intimacy?" Burr demanded of the witness. "Was there any reserve on my part in our frequent conversations, and did you ever hear me express any intention or sentiment respecting a division of the Union?"

Truxtun received this volley of questions with perfect calmness.

"We were very intimate," he admitted. "There seemed to be no reserve on your part. I never heard you speak of a division of the Union."

"Did I not state to you that the Mexican expedition would be very beneficial to the country?" Burr triumphantly demanded.

"You did," replied the witness; and then passing to his colonization plans the prisoner continued:

"Had you any serious doubts as to my intentions to settle those lands?"

"So far from that," answered the Commodore, "I was astonished at the intelligence of your having different views contained in the newspapers received from the Western States after you went thither."

After this open discomfiture the prosecution had no choice but to withdraw the Commodore and cover his retreat as best it might, and the move was effected in good order, ending in an apparently formidable stand with Peter Taylor, the gardener of Blennerhassett's Island.

Blennerhassett's Island was known to have been the headquarters of the conspirators, and it was there, if anywhere, that the government should have been able to locate some treasonable act on Burr's part to support the indictment. Up to this point all the testimony had related to what Burr had said. Now, with a witness from the scene of action, it was expected that evidence of his treasonable acts would be forthcoming, and the excitement rose to high pitch. Taylor started off bravely by repeating a conversation he had had with Blennerhassett about getting together a company of young men with rifles. These men were wanted, he was informed, to aid in settling some lands which Burr had purchased, and later his employer advised him that Burr and he intended an invasion of Mexico. The witness thereupon told Blennerhassett that the people had got it into their heads that Burr and he intended to divide the Union, to which reply was made

that Burr and he could not of their own motion effect a secession; they could only show the people the advantages of separating from the Union.

This was certainly dangerous talk, but Blennerhassett and not Burr was responsible for it, as the latter was not present at the conversation, *and it presently appeared that the witness had never even as much as seen Burr on Blennerhassett's Island!* This ludicrous anticlimax absolutely disposed of the witness, who retired in favor of Colonel Morgan.

Morgan was a distinguished citizen of Pennsylvania whom Burr had visited on one of his western trips, and he repeated several heretical remarks which Burr dropped in the course of conversation, touching the weakness of the existing government and the instability of the Union. The Colonel also gave a highly dramatic account of how Burr had sought him out one night, long after every one else had retired, to ask him about a certain man who had been involved in disloyal intrigues some years before, and then, with the audience keyed up to the highest pitch of expectation, the old gentleman solemnly averred his belief that Burr would certainly have unbosomed himself of treasona-

ble matter on that occasion *had he received any encouragement!* As it was, however, he had merely gone back to bed without divulging anything.

Nothing more farcical than such testimony was ever seriously submitted to a court and jury, and under modern practice it would be struck from the record as irrelevant and absurd. Still it was all solemnly received and recorded, and the end was not yet, for Colonel Morgan's two sons followed their father on the stand with testimony concerning Burr's disrespectful allusions to the governmental powers-that-were and his contemptuous opinions touching the strength of the existing Union. Such sentiments were doubtless very regrettable and unpatriotic, but Burr was not on trial for his opinions, and not one word in the testimony of the witnesses convicted him of anything worse than loose talk.

These repeated side-attacks indicated a strange weakness on the part of his prosecutors, and it began to look as though they had reached the end of their resources. Finally, however, a Dutch laborer named Allbright took the stand, and as he had been employed at Blennerhassett's Island, expectation was

again aroused that Burr's direct complicity was about to be exposed. Allbright speedily proved himself a stupid, ignorant, and garrulous witness, but that was about all he succeeded in accomplishing, and the few facts in his possession were indisputably in favor of the accused. Burr had explained his enterprise as an effort to settle some new lands, Allbright asserted, and the recruits gathered at the island had expressly disclaimed any intention hostile to the United States, stating that they were to move against the Spanish. These men had rifles of their own, according to the witness, but no bayonets or stores of ammunition, and they were neither organized nor drilled as soldiers.

These damaging admissions terminated the usefulness of this worthy personage, and he gave way to Blennerhassett's groom, who continued the kitchen gossip begun by his fellow-servant—an utterly futile recital from a legal stand-point. He knew nothing even tending to prove a treasonable act on Burr's part, and the stray facts scattered through his testimony were more valuable to the defence than to the prosecution, which from that moment began to yield all along the line. Witness after witness

was called to the front in rapid succession, evidently with the purpose of proving the magnitude of Burr's preparations, but these men, who were contractors, boat-builders, and other mechanics supposed to have been engaged in equipping a formidable army and navy, absolutely refuted the stories which the newspapers had circulated concerning Burr's imposing forces by showing that his expedition, though fairly supplied for colonization purposes, was inadequate for a filibustering venture and absolutely preposterous as an army of invasion.

One would think that this testimony should have warned the District Attorney that he was on dangerous ground, and why he should have rushed blindly ahead along the same lines day after day is more than any one, at this date, can possibly imagine. Certainly in summoning Dudley Woodbridge, Blennerhassett's agent, to the stand he courted destruction; and the inevitable happened, for the witness promptly exposed the myth of Blennerhassett's Golconda-like fortune with prosaic facts and figures which proved that instead of being fabulously rich the "Monte Cristo of the Ohio" was not worth much more than $20,000, very little of which had gone into Burr's hands.

This culminating disaster put the finishing touch to a campaign of blunders, and the forces of the government, blocked upon every side, halted in confusion. General Wilkinson, the original informer, had not yet been called, however, and both sides realized that if this redoubtable but extremely vulnerable ally could be manœuvred into position, the tide of battle might possibly be turned. Wilkinson admittedly knew nothing of any treasonable act on Burr's part, but he was said to be armed with incriminating cipher despatches and other corrupt communications, of which he had given what might be called a free translation in the public press, and on paper, at least, he presented a formidable showing. To effect a juncture with him, then, was the only possible move for the prosecution, and on this it concentrated all its remaining efforts. The defence, however, was keenly alive to the situation, and it determined at all hazards to prevent the General from relieving the hard-pressed foe. No act of treason had been proved against Burr, and the government virtually admitted that it had exhausted its material on this point. Therefore it was contended that Wilkinson's alleged information of the defendant's inten-

tion to commit a crime was inadmissible according to the laws of legal warfare, and on this issue, which had been foreshadowed at the very opening of hostilities, Burr's champions challenged their opponents to single combat.

A more remarkable legal tournament than that which followed the acceptance of this gage of battle has never been witnessed in an American court.

Wickham for the defence and MacRae for the prosecution were the first to enter the lists, and their fierce collision, though less spectacular than some of the encounters which were to follow, was obviously a duel to the death, fought with grim determination by trained antagonists who were equal masters of every legal cut and thrust and parry, and after three days of savage fighting neither had been compelled to bite the dust. Then Wirt for the prosecution and Botts for the defence took the field, and the champion of the government speedily obtained an advantage over his antagonist, which he improved during the entire encounter, crowding and cornering him at every move, and finally riding around and over him almost at pleasure. This was perhaps the most brilliant performance on either side, and Wirt

certainly won historical honors, for his achievement was recorded in the oratorical text-books of his time and for many a day after. With victory thus perched upon the prosecution's banners, Hay dashed into the fray, riding atilt at Lee, who withstood the shock and more than held his own, until at the end of six days fighting Luther Martin, the reckless, intemperate volunteer whom Jefferson had denounced as "that Federal bulldog," flung himself upon the enemy, and something very like a general *mêlée* followed. Martin entered the arena not only more thoroughly equipped than any other contestant, but with more bitterness and personal feeling than all the others combined. He hated Jefferson, and he threw himself into the conflict with a zealous rage which nothing could withstand. For two whole days he bore the brunt of the entire conflict, striking like lightning at every opening, giving no quarter and seeking none—a terror, a scourge, and a very fury of assault, and when Randolph at last joined in the attack the day was lost for the prosecution, and he and Martin swept the field.

It was not until the following morning, however, that the victory was officially awarded to

the defence, when the Chief Justice in an exhaustive and masterful opinion delivered a decision which created a lasting precedent, marked an epoch in American law, and practically dismissed the case at bar. No testimony relative to the conduct or declarations of the defendant elsewhere and subsequent to the transaction at Blennerhassett's Island could be admitted under the judge's ruling, and the government confessing that it had no further proof at its disposal, the case was submitted to the jury under instructions which were equivalent to a direction to acquit the accused.

But the public, hungering for a victim, was loath to believe that the prosecution had lost the day, and many were firmly convinced that the jury would not let the prisoner go unscathed. And it did not. After a short consultation the twelve "good men and true," who had sworn to administer strict justice to the accused, returned and delivered this equivocal verdict:

"*We of the jury say,*" announced Colonel Carrington, the foreman, "*that Aaron Burr is not proved to be guilty under the indictment by any evidence submitted to us. We therefore find him not guilty.*"

The words had scarcely left the speaker's lips before Burr was on his feet indignantly protesting that no "Scotch" ("not proven") verdict could be received, and demanding that the jury be directed to report the verdict of Not Guilty in the usual form; and the fact that this just demand was contested by the prosecution is eloquent of the spirit in which the whole prosecution was conducted. Indeed, during the heated discussion which followed, some of the jurors announced that nothing would induce them to change the form of their verdict, and the Chief Justice therefore promptly took the matter into his own hands by directing that the proper verdict be entered as though it had been rendered in lawful form. With this act of simple justice, after a twenty-eight-day session, the court adjourned, and the great cause ended.

The finding of "not proven," however, voiced the popular judgment of the day. Burr, it was understood, had escaped by some technicality or legal legerdemain which had enabled him to suppress evidence and defeat the ends of justice. Had Wilkinson been permitted to tell his story, it was generally believed that the prisoner would have been convicted, sentenced, and hanged.

Even after Burr was brought to trial on the minor charge of having plotted an invasion of the Spanish colonies, and Wilkinson in telling his story was convicted on cross-examination of having mistranslated and otherwise falsified the mysterious cipher despatches, there was no reaction in favor of the accused, and his second acquittal merely resulted in more charges of legal trickery. Indeed, the sneer of that "Scotch" verdict pursued Burr to his grave, and it is safe to say that its suspicious innuendo has been more effective than all the tirades of his enemies in arming posterity against him, until to-day his name is popularly linked with that of Benedict Arnold in the list of national traitors.

If such suspicions are justified, however, they should long since have been proved to have had some foundation in fact. History has been busy during the past century with all the principal actors in the great drama of Burr's downfall, and valuable evidence has been accumulated on every side. Wilkinson has been completely unmasked and discredited. Jefferson has been proved to have been more man than hero, Hamilton has been shown to have been a shrewd politician as well as an able statesman, Marshall

has been forgotten as a partisan Federalist and acclaimed the greatest jurist of America, but concerning Aaron Burr not one particle of new incriminating evidence has been unearthed. All that is known against him is recorded in the musty legal record compiled for his destruction; and read without bias, passion, or prejudice that mute appeal from the verdict of "not proven" surely invites a reversal of the judgment of his peers.

III

THE COMMONWEALTH *vs.* BROWN: THE PRELUDE TO THE CIVIL WAR

LOYALTY to the soil is the birthright of every Virginian and local pride is his second nature. For him the State has no rival save his county, and the county none but the city, hamlet, or acreage in which his home is enshrined. Nevertheless, if any one had predicted on October 19, 1859, that the county-seat of Jefferson County was on the eve of world-wide recognition, even the stanchest local champion would have been puzzled by the prophecy, for there was absolutely nothing to indicate that the peaceful little village, which had slept in the Shenandoah Valley for more than half a century, would ever wake to find itself famous. Yet within twenty-four hours the eyes of the world were turned in its direction, following the wounded body of John Brown as it was borne to the county jail, and history

had already transcribed the name of Charles Town upon its tablets.

Even after the event, however, it is doubtful if any Virginian would have admitted its historical significance.

A band of miscreants, inflamed by Abolition heresies, had invaded the Old Dominion to incite rebellion among the slaves. As a natural consequence most of them had forfeited their lives on the spot, and the survivors had been delivered to the local authorities for speedy trial and execution; but, to the majority of Virginians, there was nothing in those facts which promised to confer distinction upon the seat of justice.

The first wild gust of rage and indignation against the raiders had spent itself in the ferocious slaughter of all but five of Brown's party at Harper's Ferry, but the State was still palpitating with furious excitement when Governor Wise assumed control of the situation, and it was universally admitted that if he had intrusted the prisoners to the State instead of the Federal troops not one of them would have reached the jail alive. The prompt and determined action of the authorities in protecting their captives was, however, thoroughly understood, and

intelligent public opinion throughout the State supported and practically enforced acquiescence in the government's policy. There had been enough, and more than enough, of summary punishment. Virginian honor was to be vindicated thereafter by Virginian law administered with impressive dignity as a grim and terrible object-lesson to all beholders, and it was plainly intimated that any resort to mob violence would be severely dealt with.

This calm judicial programme did not meet with universal approval. To the average citizen any one guilty of inciting the horror of a servile insurrection was an outlaw—a fiend in human shape — who had no rights which any white man was bound to respect, and the hotheads among the groups collected about the Carter House and every other local forum in Charles Town were in no mood for legal formalities or delay. Indeed, had it not been for the facts that the Grand Jury was already in session and the semi-annual term of the Circuit Court about to open, it is extremely doubtful if the law would have been allowed to take its course. There was a general impression, however, even among lawyers, that Brown and his confederates could be indicted, tried,

convicted, sentenced, and probably executed within a single day; but before it was discovered that this was impracticable under the Virginian code, which required a preliminary examination on five days' notice, the prisoners had been secured against any immediate attack.

Those five days of enforced inactivity were prolific of rumors and alarms of the most sensational character, and the military guard at the jail was increased in response to the rising popular excitement. At first it was reported that Brown's little company was merely the vanguard of a mighty Northern army sworn to invade and humiliate Virginia. Next it was rumored that the slaves throughout the State had been tampered with, and that a secret organization among them was planning a revolt of hideous and diabolical ferocity, designed to strike terror to the entire slave-holding population throughout the South. Again it was reported that preparations were being made on every side to effect a rescue of the surviving captives, and that the Abolitionists of the North were confident of defeating the administration of justice and laughing defiance at Virginian law. No story was too wild for utterance or too fan-

tastic for belief, and as each new arrival at the Carter House was instantly surrounded by excited throngs eager to welcome every word from the outside world, it was not long before exaggeration and imagination became the chief ingredients of the lurid tales which passed from lip to lip.

Even if it had been possible to contradict all the vague reports in circulation it would have been idle to attempt the task. No Virginian could believe that a mere handful of men would try what Brown had attempted without definite assurances of support. Instead of maintaining a dignified silence and allowing the outraged South to inform itself, however, the most powerful journals of the North played upon the fears and sensibilities of the community with impish ingenuity, and some of the most violent Abolitionists actually descended to practical jokes in their efforts to heighten the excitement and spread the alarm.

Under these circumstances it is not at all surprising that the once peaceful village soon assumed the appearance of an armed camp. Every other man on the highways carried a weapon of some description; lawyers, farmers, and other visitors hung about the piazzas and

corridors of the hotel with rifles or shot-guns in their hands and militia were to be encountered at every turn. The vague and awful rumors of each day resulted in long, sleepless nights, dread with all the unnamable possibilities of a black uprising, and when October 25th dawned Charles Town was already astir and gathering before the jail with eager expectation.

But the civil and military authorities had been upon the ground before the public, and the earliest arrivals found cannon posted before the court-house and every approach to the building guarded by armed sentries. Indeed, the oldest inhabitants scarcely recognized the sleepy old village as they issued from their houses in the gray of that autumn morning. Martial law had not been proclaimed, but the militia were evidently in complete possession, and on every side there were signs of sinister preparation. Even the crowds that began to gather in the early hours of the morning included comparatively few familiar faces, for strangers had been pouring into the village for days, and the hotels, the post-office, and every other public meeting-place were already overrun with them. Newspaper representatives circulated among the groups gathered before the

court-house, button-holing the residents for items of local information, but except for their activity there was very little movement in the crowds which hung around the centres of interest discussing the situation, or whiling away the time by brushing the dry leaves about in listless search for fallen chestnuts. Here and there voices were raised in fierce denunciation of the prisoners, but for the most part the citizens conversed in low tones as they idled under the tall spreading trees, and a sullen quiet pervaded the atmosphere, hazy with the smoke of burning leaves and heavy with their pungent odor. Hour after hour passed uneventfully in this fashion, but at last the court-house doors were opened. Only those nearest the entrance gained admittance, however, for the first eager rush was checked by the troops, and none but those who were identified to the sentries were permitted to pass thereafter.

A long hour of waiting followed, and the excluded public hung patiently about the court-house steps, massed around the heavy white Corinthian columns supporting the portico, until the bell in the cupola began a deep-toned clanging. On ordinary court days this summons served to warn the lawyers and others gathered

at the Carter House that the legal proceedings were about to open; and those having business with the law usually sauntered across the road to the court-house with characteristic deliberation. But on this occasion the hotel was already deserted and the expectant throng immediately moved towards the jail. At the same moment a roll of drums answered the bell and a double file of soldiers issued from the jail door, marching in column of twos on either side of the short path leading from the jail to the court-house, where they halted and faced each other. The rear rank of each file was then swung to the right-about, with fixed bayonets, and rifles loaded, capped, and cocked, and in another moment the command "*Port* arms!" rang out sharply in the still autumn air. Instantly the crowd surged about the troops, peering eagerly through their close ranks or craning down at them from the court-house steps; and as the soldiers brought their pieces to position, the sheriff emerged from the jail, accompanied by Captain Avis, the jailer, and two armed guards. There was a moment's delay, and then two other men appeared on the threshold, one of them partially supporting the other, an old, bareheaded man over six feet in height,

his head swathed in blood-stained bandages, and his face as gray as his thick, wiry hair, and long unkempt beard, but whose piercing blue-gray eyes showed no trace of fear. Instinctively the soldiers braced themselves to withstand a rush if the crowd should attempt to hurl itself upon the manacled prisoner, but there was not a hostile movement of any kind, and scarcely a word of denunciation was flung at the old ring-leader as he tottered down the closely guarded aisle. Doubtless the pitiably feeble condition of the man and his fellow-captives enforced the silence, and certainly their appearance was sufficiently wretched to move the most stony-hearted. Brown's body had been repeatedly pierced by sword-thrusts, and his head and face had been slashed by sabre-cuts almost beyond recognition; and Stephens, his second in command, had three musket wounds in his head, two in his breast, and one in an arm, to say nothing of a ghastly rip across his forehead made by a glancing ball.

The little procession crept slowly along the narrow path, for the prisoners could hardly stand and every step they took was plainly torture. Finally they reached the court-house steps, mounted them with evident anguish, and in a

few moments John Brown and his confederates faced their formal accusers.

There was nothing very impressive in the scene which greeted the fierce old campaigner as his restive eyes swept the crowded court-room. The majesty of the law at Charles Town lacked all the trappings which favor and heighten dignity. The plain, whitewashed walls smeared and stained with head and hand marks, the high, dirty, curtainless windows, the two hideous wood-stoves with their crude, black, crooked smoke-pipes, the bare, dirty floor strewn with peanut and chestnut shells, the stifling atmosphere heavy with the odor of stale tobacco smoke and the respirations of five or six hundred closely wedged spectators—none of the surroundings or conditions was calculated to command respect or to inspire heroism.

Every eye in the room centred on the shackled prisoner, and in the mass of faces turned towards him not even a fleeting expression of sympathy was anywhere discernible. No articulate demonstration of hostility had greeted his entrance, but the silence of those hundreds of men who glared at him from every nook and corner of the room was eloquent of the implacable hatred he had inspired. Against this ominous background,

bristling with bayonets, and touched here and there with color in the motley uniforms of the militia, a few individuals loomed out of the murky atmosphere.

On the chairs behind the judicial desk sat eight justices of the peace, forming the Board of Magistrates, whose duty it was to examine the accused, dismiss them or hold them for the action of the Grand Jury. Some of them were men of character and standing in the community, and all of them were competent for their purely formal duties. Before the bench at the counsels' table sat a hard-faced, dissipated-looking man with a sharp, hooked nose, and a weak chin covered with a few days' growth of beard, his hair uncombed and tumbled and his clothes dirty and awry. This was Charles Harding, the Commonwealth's attorney—the driftwood of some political stream which had landed him upon Jefferson County—sober for the instant, but incapable by habit, temperament, or education of conducting any but the most perfunctory of official duties. Near this legal wreck sat a man of singularly distinguished appearance, tall, handsome, alert, and vigorous—his clean-shaven, refined face and clear, intelligent eyes contrasting strangely with the coarse-grained individual

beside him. This was Andrew Hunter, an able member of the Virginian bar, designated by Governor Wise as special prosecutor for the occasion, and destined, by reason of this appointment, to be the most important character in all Virginia for many a day thereafter. Within the counsels' rail, and not far from these legal luminaries, sat a gentleman of the old school, whose calm face, aristocratic bearing, and personal distinction marked him as a man apart; for Colonel Lewis Washington looked as though he might have stepped out of Trumbull's portrait of his great-uncle George, whose family had founded Charles Town almost half a century before.

Probably this distinguished Virginian was one of the very few that old Brown recognized in the blur of faces turned towards him as he tottered into the silent court-room, for the Colonel had been one of the slave-owners kidnapped as hostages just prior to the raid, and he and his captor had held much conversation during their enforced companionship. Indeed, the sword which Brown had "appropriated" for the occasion and proudly borne during the siege of the engine-house was Colonel Washington's property and was reputedly one of the President's presentation blades.

But perhaps the most striking personality of all those projected from the dark human canvas was that of the tall military individual who stood near the bench—a rather pompous and self-important figure of a man, clothed in what appeared to be a uniform of some character and bearing an old-fashioned rifle in his clutch. A mass of luxuriant whiskers and a flowing mustache covered a large portion of this singular person's countenance, and his long, straight hair, brushed back into a species of double queue, was looped in some curious fashion so that the braided strands encircled his head and joined in a bow-knot in the centre of his forehead. This was no less a personage than Colonel J. Lucius Davis—a noted duellist—a relic of a passing period of Virginian chivalry, and, for the time being, military major-domo and sergeant-at-arms.

Very little time was wasted in formally arraigning the prisoners at the bar. In rough and clumsy fashion Harding, the local prosecutor, opened the proceedings by demanding that the prisoners state whether they were represented by counsel or whether they wished counsel to be assigned them by the court. Every word, tone, and gesture of the coarse little administrator of

the law indicated his attitude towards the business in hand. Quick work and no ceremony was to be the order of the day. This was his hour to swagger in the public eye, and he doubtless argued that the effect would be heightened by a display of official austerity and roughness. Something of this must have been vaguely conveyed to the gaunt, haggard old man at whom the prosecutor aimed his inquiry, for with a supreme effort he rose from his chair, his blazing eyes directed not at the bench or at any particular individual, but comprehending the entire audience in their sweep. Even in his enfeebled condition he was still a magnificent figure—rough-hewn but Titanic, patriarchal but aggressive—his strongly Hebraic features showing passion, purpose, courage, and relentlessness in every line.

"Virginians!" he began, and his low well-modulated voice reached every corner of the court-room in the deathlike silence: "Virginians! I did not ask for quarter at the time I was taken. I did not ask to have my life spared. . . . If you seek my blood you can have it at any moment without this mockery of a trial. I have no counsel. . . . If we are to be forced with a mere form—a trial for execution—you might spare

yourself that trouble. I am ready for my fate. . . . I beg for no insult—nothing but that which conscience gives or cowardice drives you to practise. I ask again to be excused the mockery of a trial. I do not even know what the special design of this examination is. I do not know what is to be the benefit of it to the Commonwealth. I have now little further to ask, other than that I may not be foolishly insulted."

The speaker swayed and sank into his chair again, but every word of his brief utterance was aimed at the pride of Virginia, and it found its mark. It was the courageous defiance of a man at bay, ready for death, but supremely conscious of his own dignity; and, for the instant, something akin to respect for the old fanatic kindled in the minds of his auditors. Indeed, if there had been, up to that moment, any thought of satisfying the public conscience with the form instead of the substance of a trial, that dramatic challenge disposed of it on the instant, and before the wondering whispers of the audience ceased Brown had, by sheer force of his personality, accomplished for himself what no lawyer could have secured him—namely, a fair field, if no favor.

With this effective prelude the formalities

before the committing magistrates were immediately inaugurated and speedily concluded. Messrs. Lawson Botts and Charles J. Faulkner, of the local bar, were assigned as counsel for the accused, a perfunctory examination of witnesses was conducted by Harding, and the prisoners promptly held for the action of the Grand Jury, which, being already in session, quickly returned indictments for treason, inciting slaves to rebellion, and for murder, each offence being punishable with death. Indeed, there was scarcely a creak in the carefully oiled machinery of the law, and within twenty-four hours of his first arraignment John Brown was called to face a jury of his peers.

Before another day had passed, however, the prosecution was to learn that there was something more important at stake than a speedy conviction, and every day the proceedings lasted was to drive this lesson home. But the public, believing that the first day of the trial would be the last, determined not to miss what might be its only chance for viewing the criminal at close range, and the crowd massed in front of the jail on the second court day was even greater than that which witnessed the prisoner's first appearance.

Again the crude and dirty court-room was crowded to its utmost capacity, and even the windows choked with lowering humanity; but in some particulars the aspect of the place had undergone a transformation since the prisoner first passed its threshold.

Behind the judicial desk sat Richard Parker, a jurist of experience and ability, the third of his name to occupy the bench. Short, almost diminutive of stature, his was still a commanding presence—his face stern, but with clear-cut features bespeaking courage, conviction, and strong, forceful character. In age, physique, and mentality Judge Parker was in his prime, and although he was by tradition, birth, and training strongly in sympathy with the thought and principles of his State, no fairer presiding officer could have been selected within the limits of Virginia.

Among the densely massed spectators sat James Mason, United States Senator from Virginia and author of the Fugitive-Slave Law, a fierce, eager, passionate partisan of the South, who had flown to Harper's Ferry at the earliest possible moment and hungrily cross-examined Brown, as he lay weltering in his blood, hoping to secure incriminating evidence against some

of the Black Republicans, and this was undoubtedly the explanation of his presence in the court-room.

Over the counsels' table leaned Lawson Botts,[1] the prisoner's thin, active, wiry lawyer, who sat waiting the arrival of his client, his legs coiled around the legs of his chair, and his body bent forward in a characteristic posture as though poised for a spring; and by his side sat the Mayor of Charles Town, Thomas Green,[2] the successor of Mr. Faulkner, who had declined the ungrateful task of defending a man whom he had personally attempted to kill or capture at Harper's Ferry. The new counsel for the prisoner was a long, angular, uncouth limb of the law of singular appearance and no little oddity of manner, but a man of considerable ability, who was to prove before many hours had passed that he

[1] Lawson Botts, who was thirty-six years old at the time of Brown's trial, was a grandson of Benjamin Botts, who defended Aaron Burr. He entered the Confederate army as a captain and immediately distinguished himself in the field, being promoted to the rank of colonel for conspicuous gallantry. He was mortally wounded at the second battle of Manassas, August 28, 1862.

[2] Thomas C. Green served in the Confederate army as a private under Major Botts during the Civil War and saw hard service. He was appointed to the bench in 1875, serving in the Supreme Court of Appeals (West Virginia) with great distinction until his death in 1889. He was in his thirty-ninth year at the time of Brown's trial.

possessed a quick wit and such a flow of language that he seemed to speak "whole sentences abreast of each other" in the rush and tumble of his words.

Harding, the local functionary, had already yielded precedence to Andrew Hunter, the special prosecutor, and with a few spasmodic efforts to assert his authority, he gradually lapsed into the background, against which he was occasionally discerned sleeping off his potations, totally oblivious to his surroundings.

A rough cot had been placed on the floor within the counsels' railing and almost directly before the bench, for the previous day's experience had proved too much for the wounded prisoner and he could no longer even stand without assistance. Immediately upon his entrance he made a brief appeal for a postponement of the trial on account of his physical weakness, but it was disregarded, and two men lifted him to his feet and supported him while the lengthy indictment was read and his plea of "not guilty" entered, whereupon he immediately sank upon his couch, drew a blanket about him, closed his eyes, and rarely opened them again during the day's proceedings.

Left to themselves in this fashion, the lawyers

for the defence faced a task of unparalleled difficulty, presenting an opportunity for fame unequalled in the history of the law, but requiring a man as great as the occasion. Probably no member of the Virginian bar and possibly no advocate anywhere in the country could have risen to the emergency, and it would have been unreasonable, under the circumstances,to expect the two Virginians charged with the defence to imperil themselves in such a cause. Both men undoubtedly loathed Brown and all his works, but even if they had doubted his guilt under the law, his policy of bold admission and his utter indifference to the result would have chilled the finest enthusiasm. Each of them made earnest pleas for a postponement of the trial before a jury was impanelled, urging their client's condition and their absolute lack of all opportunity for examining the indictment or otherwise preparing for the defence; but Mr. Hunter stoutly objected to any delay, dwelling upon the need of swift justice to demonstrate the efficiency of the law, and Harding appealed to the worst fears of the community by vague reference to impending rescues and negro insurrections. Finally the judge called the prison doctor to the stand, who cheerfully testified that the ap-

parently unconscious man at his feet was in a fit condition to fight for his life, whereupon the request for delay was denied and the impanelling of a jury promptly directed.

Had the talesmen been strictly examined and challenged it is extremely doubtful if one wholly unprejudiced juror could have been secured in the entire county, but it is probable that the men who were finally sworn into the jury-box were as well qualified as any other Virginians. Some of them were slave-holders, but not all, and as, under the practice, twenty-four were originally selected, of which the defence had the right to strike out eight and select twelve by lot, the prisoner was fairly protected by the statutes. Any attorney who had insisted upon more than the letter of the law on such an occasion would have been overruled and his protests would have served no useful purpose. Even as it was, a competent jury was not obtained until nightfall, and the prosecution did not fairly open until the following day.

As soon as the court resumed business the next morning Mr. Botts arose on behalf of his client with the announcement that he had received information by telegraph that there was insanity in Brown's family. He desired

time, he declared, to investigate the seemingly well-supported statement of the prisoner's mental incapacity; but in the midst of his earnest plea for an adjournment he was interrupted in the most unexpected manner, for with a supreme effort the prisoner struggled up from his pallet and demanded a hearing from the court.

The old man's face was drawn and haggard with suffering, but his eyes blazed with excitement as he raised himself to a sitting posture, and supporting his body with his long, muscular arms, gazed intently at the bench. Then, in a voice shaken with emotion, but with every mental faculty evidently on the alert, he repudiated his lawyer's plea, explaining with convincing clearness that there was no insanity in his father's family, although, as his counsel had stated, some of his mother's family, his first wife, and some of her children had been mentally afflicted, and this short explanation ended with a scornful refusal to countenance any subterfuge in his behalf.

A murmur of astonishment burst from the dense audience as the speaker concluded, and drawing his blanket closely around him, again sank into a recumbent position. What was

the meaning of this performance? Everybody had supposed that the old scoundrel was "playing possum" to waste time, but here was a chance to drag matters along indefinitely and he refused to take it! What sort of a game was he up to, anyway?

But the game which the wounded fanatic had in mind was altogether beyond the comprehension of the questioners, and they little dreamed that this was the one agonizingly crucial moment of the whole trial to him; for between the wild nightmare of the Harper's Ferry raid and the dawn of his arraignment, John Brown had dreamed a strange and wonderful dream, and the dream was proving true.

He was no longer an avenging fury, but a pawn in a mighty contest projected in his mental vision, and his the opening move. Would his foes refuse his lead or would they accept it and sweep him from the board? On one hand the ignominious madhouse yawned — on the other the glorious gallows. Futile commiseration and contempt or inspiring martyrdom was to be his portion, and the issue hung on a thread during the breathless hush that followed his surprising outburst. Not his fate alone trembled in the balance. Virginia, straining every

nerve to make an example of him, had it in her power to punish him as no culprit had ever been punished before. Would she seize her opportunity? No wonder beads of perspiration moistened the prisoner's forehead as he lay huddled under his crumpled blanket.

In the hush of expectation Mr. Green rose to confess his embarrassment in urging a defence which had been openly repudiated by his client, yet he felt that the existing circumstances demanded investigation, and with some vigor he proclaimed his views upon the point. Mr. Hunter was, however, of a different opinion, and with extreme professional courtesy and considerable prolixity, the question was battledored and shuttlecocked between him and his opponents. Finally His Honor interfered by observing that there was no legal question before the court in the absence of sworn statements supporting the defence of insanity, and the trial must therefore proceed forthwith.

What a sensation of relief that momentous decision must have afforded the anxious defendant as he lay extended on his prison cot! All danger of being ignobly relegated to a madhouse was over, and the burning eyes that

glittered from his coverlet closed in seeming slumber, not to re-open during the remainder of the day. From that hour it was no longer John Brown but Virginia that stood on trial.

It was still early in the morning when this crisis passed, and Harding being in a condition to assert his prerogative, made the opening address to the jury. His denunciation of the criminal was followed in due course by a conservative plea from Messrs. Botts and Green, which Mr. Hunter duly tore to pieces in his turn; by which time the jurors were thoroughly advised of all they had known before they entered the jury-box and no more, for the main facts of the Harper's Ferry raid had been familiar to every man, woman, and child in Virginia for days, and the counsel for the prisoner had had no opportunity to devise any comprehensible theory of defence.

The speeches finished, Mr. Hunter lost no time in producing witnesses to support his story, and man after man took the stand and swore to the events at Harper's Ferry on the 16th, 17th, and 18th of October. One version of the affair was much like another, but the personality of each witness was strongly in evidence. Some were scrupulously careful to give nothing but

the facts, while others obviously stretched the truth in their anxiety to damage the defendant. In the main, however, the history of the raid was as clearly recounted then as it has ever been since.

On the night of October 16, 1859, a small party of men under Brown had descended on Harper's Ferry, where they had separated, some seizing the railroad bridge, others taking possession of the United States Arsenal, and still others visiting the plantations of local slave-owners, whose persons and slaves they took into custody. Early the next morning a railroad train had been held up at the bridge, and during an altercation a negro railroad employé had been shot. Shortly after this casualty the town was aroused, the militia was summoned, and desultory firing began between the citizens and isolated detachments of the raiders, during which several persons on both sides were killed or wounded. Finally Brown and a few of his followers had barricaded themselves with their prisoners in the engine-house near the United States Arsenal, where they were surrounded by the citizens and military and cut off from all escape. Again and again during the siege that followed, Brown had attempted to negotiate

with his assailants, but his flags of truce had been repeatedly disregarded, and the men who bore them either captured or shot, and during the firing Mr. Fontaine Beckham, the Mayor of Harper's Ferry, had fallen mortally wounded.

Finally, some thirty-six hours after Brown had entered the town, a company of United States Marines under Colonel Robert E. Lee and Lieutenant J. E. B. Stuart stormed the engine-house[1] and either killed or captured the defenders, Brown himself being sabred as he stood defenceless just inside the door. Twelve of his men had been killed, including two of his sons, two were wounded, and one escaped; and of the attacking citizens five were dead and nine wounded.

Such, in outline, was the story of the affair as told by eye-witnesses, and the oral testimony was then supplemented by a copy of the curious "Constitution and Ordinances" which Brown had drawn up for the government of his followers, and for the reconstruction of the United

[1] The capture having been made by United States troops on United States property, the jurisdiction would seem to have been that of the Federal and not the State courts. Indeed, one of the prisoners was indicted in the United States courts, and it would have been a shrewd political move to have thrown the onus of the whole business on the national authorities.

States Constitution "through amendment and repeal." Letters were also introduced from Joshua R. Giddings, the Abolitionist member of Congress from Ohio, for whose head one of the Richmond journals subsequently advertised a reward of ten thousand dollars, and these, with a document called Brown's autobiography and some communications from Gerrit Smith, the Boston Abolitionist, completed the documentary evidence; and at the end of two short sessions the prosecution closed its case.

Before this point had been reached, however, an incident occurred which reawakened all the slumbering fears and suspicions of the community and deepened the intense feeling against the accused. On the third morning of the trial a young man appeared in the court-room who introduced himself as George Henry Hoyt, of Boston, and announced that he had come from Massachusetts to offer his professional services to the defence. Neither Brown nor any one else in Charles Town knew this volunteer counsel, and Messrs. Botts and Green at first declined his assistance, though they finally yielded at the request of their client. But Andrew Hunter mistrusted this strange intrusion, and shrewdly suspecting that a mere boy like Hoyt

might not be qualified for legal duties, he promptly challenged his right to practise in the courts, and the visitor was utterly unable to substantiate his claim to membership in the bar. At this juncture Judge Parker intervened, suggesting that formal proof be dispensed with, and the stranger, who was only just of age and extremely boyish for his years, was sworn in as associate counsel for the defence.

Hoyt's reception raised a violent storm of protest and indignation in the Northern press, and Brown's biographers have almost universally assailed Hunter for his professional discourtesy and generally overbearing conduct towards the representative of the Massachusetts bar. Had they been informed of that innocent young gentleman's real purpose, however, they might have suspended their attacks upon the official prosecutor; and had the latter known, instead of merely suspected, that the legal fledgling was the agent of a rescue party instructed to make drawings of the jail and its defences, it is extremely doubtful if George Henry Hoyt would have ever left the town alive. Nevertheless, it is now well established that the young man's sole mission in Charles Town was to obtain in-

formation concerning the feasibility of Brown's rescue, and that, inspired by enthusiasm for the Abolition cause, he had taken his life in his hands and accepted the service, little dreaming of the responsibilities which his rôle of counsel was soon to entail upon him.

It was only a few hours after young Hoyt appeared in Charles Town that the prosecution rested, and it at once became necessary for Brown's lawyers to formulate some sort of a defence. Destitute as they were of material, it would still have been possible for the Virginian counsel to have made a respectable showing on law points had it not been for their client's extraordinary notions of the lines upon which the so-called defence should be conducted, and his utter rejection of all plans except his own.

During his incarceration the old man had prepared a list of witnesses, which included most of the slave-holding citizens he had held as hostages, and he directed that these men should be subpœnaed to testify to his humane treatment of them, and his endeavor to shield them and prevent the shedding of blood. No direct or convincing proof had been offered to show that he had slain or even injured any one during the fighting, and some of the Commonwealth's wit-

nesses had already asserted that his orders were to act solely on the defensive; but from a legal stand-point the proposed testimony was irrelevant, if not absurd, and Messrs. Botts and Green protested against such futile tactics.

But Brown knew what he was attempting to accomplish even if his counsel did not. He cherished no illusions as to the effect of such a defence upon the jury or upon any one in Virginia, but he had determined to place himself upon record before the people of the North and it was to them that his plea was directed. Pursuant to his request, several witnesses were summoned and responded to the call, but the very first questions addressed to them met with strenuous objection from the prosecutor. What difference would it make, he demanded, if a thousand witnesses should testify to the defendant's kind attentions to his prisoners or his merciful instructions to his accomplices? There would be nothing in those facts which the jury could consider. Such testimony was a sheer waste of time.

Unanswerable as this argument was, the lawyers persisted, and Brown's consideration for his prisoners and his efforts to prevent bloodshed were fairly established. Then, to contrast

his conduct with that of his assailants, testimony was introduced showing the treatment which his truce-bearers had received, and a more revolting recital of mob violence has never been recorded in a court. With scarcely a tinge of shame or compunction of any sort, Henry Hunter, the prosecutor's own son, took the stand and confessed that, enraged by the death of his uncle, Fontaine Beckham, he and another young man had sought out Thompson, one of Brown's men who had been captured bearing a flag of truce, and had attempted to shoot him as he sat bound hand and foot in a room of the Harper's Ferry hotel, and that being foiled in this effort by a young woman who threw herself upon the prisoner and shielded him with her own body, they had at last dragged him out of the hotel to the railroad bridge, and there despatched him with their revolvers, throwing his body into the river.

At no other time, perhaps, in the history of the country would it have been possible for a man to repeat a story of such degraded ferocity in the presence of his father without a blush, and under no other conditions could a father have listened to such a confession without mental anguish and horror. Yet such was the

state of public feeling regarding the crimes with which Brown was charged that Andrew Hunter, a man of reputation and standing in the community, not only heard this brutal avowal with calmness, but encouraged the witness as he made it and continued his prosecution of the prisoner at the bar with unabated vigor. Indeed, the only man in the court-room who was visibly moved by this shocking recital was the defendant, who shed tears as he listened to the hideous details of his follower's death.

Despite this and similar testimony, it was not long before the witnesses had told all they had to tell in Brown's favor, and as some of those called did not answer to their names, it was apparent that the proceedings must speedily be brought to a conclusion. But the wounded man lying upon the court-house floor was not content to have the curtain fall. He instinctively realized that every hour he could hold the stage was vital to his cause, and although he knew that he had begun to arrest and focus the attention of the North he was not yet satisfied with the result. He wanted more time to drive his message home, and he determined to obtain it at any and every cost.

Witness after witness had been called with-

out response, and the lawyers for the defence were keeping up the fight, never dreaming that their client was dissatisfied with their efforts, when the inert man behind them slowly opened his eyes and rested them for an instant on the earnest, boyish face of young Hoyt, who was bending over and gently fanning him. Possibly it was the sympathy of that young enthusiast's face which inspired the old man to immediate action, for, to the intense astonishment of the spectators, he suddenly struggled to his feet and burst into a torrent of denunciation and appeal.

He had been promised a fair trial, but the promise had been broken, he vociferated. The trial was a farce! He had directed witnesses to be subpœnaed and they were not in court. He had no counsel upon whom he could rely, and if he was to have anything deserving the name or resembling the shadow of a fair trial it was essential that the case be adjourned until he should procure counsel who would enforce the attendance of his witnesses. One day should be allowed him as a matter of decency. If not, let the Commonwealth do its worst!

The moment he had uttered this fierce pronouncement, the prisoner regained his usual

calmness, and, quietly resuming his former attitude, settled himself comfortably upon his couch without a word to his astonished counsel.

The moment order had been restored in the court-room, Messrs. Botts and Green sprang to their feet indignantly repudiating the reflections which had been cast upon their professional conduct. They had represented the prisoner to the best of their ability, they declared, faithfully followed his instructions, and performed every duty which law or honor entailed upon them; but their motives having been impunged, and a want of confidence in them expressed in open court, they had no alternative but to resign and leave the case in charge of the gentleman from Massachusetts.

Utterly unprepared for this catastrophe, young Hoyt rose, his face flushing with excitement and embarrassment. He had only just completed his course as a law student, and even if he had had experience in the Massachusetts court-rooms, he was wholly ignorant of Virginian law and practice. The situation was at once painful and dangerous. Knowing the true explanation of his presence at the trial, he realized the peril of failing to support the rôle he had assumed, but he had neither the knowledge nor

the ability to accept the responsibility thrown upon him.

No member of the bar ever faced a more desperate situation than that which confronted this inexperienced stripling as he met the smiles and derision of the hostile spectators, some of whom would have cheerfully torn him to pieces had they divined his secret. But mere boy as he was, young Hoyt possessed a daring and courage which was destined at no distant day to carry him from the ranks to the command of a regiment on the field of battle, and he rose to the emergency unafraid.

With earnest simplicity and true dignity he pointed out the embarrassing situation in which he found himself, confessed his complete ignorance of Virginian law, advised the court that other counsel were momentarily expected, and urged an adjournment until their arrival. Had the judge listened to Harding's vehement objections the defence must have come to an abrupt conclusion then and there; but the retiring lawyers, inspired by Hoyt's bold front in the face of such odds, generously seconded his efforts, offering to devote every spare moment to preparing him for his duties if the court would grant a postponement, and Judge Parker finally

adjourned the trial until the following morning.

Before the sessions were resumed, however, the defence received strong reinforcements. Through the indirect intervention of Montgomery Blair, Mr. Samuel Chilton, of Washington, had been retained to represent Brown's interests, and the services of Mr. Hiram Griswold,[1] of Cleveland, Ohio, had also been secured by the prisoner's friends in that State, and both of these gentlemen appeared in court when the case was again called for trial.

Samuel Chilton was a lawyer of unquestionable ability, well and favorably known to the Virginian bar, and related to Justice Parker; but he had undertaken the case with great reluctance and his appearance at the eleventh hour placed him at a disadvantage. Mr. Griswold was also an advocate of considerable reputation in his own State, but he was even more handicapped by total lack of preparation than his new associate, for he knew practically nothing of Virginian law, and most of the points which these gentlemen presented were suggested to them by Messrs. Botts and Green.

[1] Newspaper and other reports of the trial note the appearance of *Henry* Griswold, but this is an error.

The presence of his new counsel, however, accomplished precisely what Brown most desired, for it enabled him to keep the field for another twenty-four hours, and it was not until November 1st, the sixth day of the trial, that the closing speeches were in order.

Both Griswold and Chilton addressed the jurors with force and discretion, making no futile appeal to their sympathies, but attempting to create a doubt in their minds as to the defendant's guilt under the indictment. Andrew Hunter then summed up for the Commonwealth, displaying admirable reserve and great ability, and by the early afternoon Judge Parker had charged the jurors with unexceptional fairness and directed them to retire for their verdict.

During all these proceedings the prisoner never stirred from his couch, but lay with closed eyes, apparently unconscious of the legal battling for his life; and when the jury filed into the room and recorded their verdict of guilty on each of the three indictments, he merely turned over on his side and settled himself more comfortably upon his pillow.

No sane man in Charles Town had doubted the result from the first, and there was no cause for rejoicing, yet it is to the credit of Virginia that

in the tension of that moment, when the verdict was announced, no demonstration of any kind voiced the popular approval.

Silently and without disorder the crowd passed from the court, massing for a moment before the jail as the condemned man was borne to his cell surrounded by the militia, and then quietly dispersing to spread the news that Virginia had written the first word of her answer to all Abolition malefactors, and had written it in blood.

On the following evening the prisoner was conducted to the court for sentence, and again every square inch inside the building was occupied by an expectant throng, half hidden in the big, black shadows of the gas-lit room.

Already at the counsels' table papers and books had accumulated in the trial of Brown's followers, and the machinery of the law was once more in motion. The interest of the crowd, immediately centred upon the convicted prisoner, for it was universally expected that he would attempt an inflammatory harangue in response to the formal questions preceding sentence. No such thought, however, had apparently entered Brown's head, and it is extremely doubtful if he was aware of the pur-

pose for which he had been conducted to the court-room. Indeed, when the clerk demanded if he could assign any reason why sentence should not be pronounced upon him, he stared at the bench in evident astonishment, and it was some moments before he answered.

"I have, may it please the court, a few words to say," he began. "In the first place, I deny everything but what I have all along admitted —the design on my part to free the slaves. . . . That was all I intended. . . . Now, if it is necessary that I forfeit my life for the furtherance of the ends of justice, and mingle my blood with the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments, I submit. Let it be done. Let me say one word further. I feel entirely satisfied with the treatment I have received on my trial. Considering all the circumstances it has been more generous than I expected. But I feel no consciousness of guilt. I have stated from the first what was my intention and what was not. . . . Now I have done."

In the hush that followed this quiet, simple utterance, John Brown was sentenced to be hanged on December 2d, and a few moments later he was smuggled out of the building, not

a man in the audience being permitted to stir until he had been safely returned to his cell without the assistance of the militia, whose services Judge Parker had haughtily declined, holding that soldiers had no business in a court of law.

It was not long, however, before the civil aspects of that hall of justice utterly disappeared, for within a month the military authorities took complete possession of every public building for the housing of the thousands of troops assembled in Charles Town. Indeed, on the evening of December 1st, two companies of militia were quartered in the court-room itself, guns stacked outside the counsels' railing, knapsacks and canteens piled upon the bench; belts, cartridge-boxes, and accoutrements of all kinds lying on the counsels' table; and among the men who slept upon their blankets on the floor and benches of the dismantled court-room was John Wilkes Booth, a private in Company F of the Jefferson Guards.

All this display of force was designed to strike terror to the hearts of the Abolitionists, and prevent the rescue of a man whose only fear was that he might not be allowed to die upon the gallows, whose worst enemies were the friends who plotted and petitioned in his behalf, whose

only danger was that some inspired statesman in Virginia would divine the danger of his martyrdom and devise the means of reopening the question of his sanity; and whose supreme moment was when he stood upon the scaffold, while the armed hosts of Virginia marched and countermarched, deployed, skirmished, and manœuvred in battle array to insure the fulfilment of his heart's desire. No wonder he stood steady as a soldier on parade, while the muskets rattled and the ground shook beneath the tramping feet.

IV

DRED SCOTT *vs.* SANFORD: THE UNCOVERING OF AN HISTORIC TRIAL

No legal controversy in the United States has equalled the Dred Scott case in point of historic interest, and yet, strangely enough, its origin has remained more or less a mystery. As early as 1858 the charge was made that it was a political conspiracy to obtain a decision favorable to the slave power by means of a trumped-up case prosecuted in bad faith and insincerely defended. This sinister accusation was promptly and authoritatively refuted at the time, but the ugly rumors and suspicions upon which it was based have persisted, in one form or another, to this day.

The more popular view of the litigation, however, presents it as the heroic struggle of an abused slave against a cruel master, and the historians have either adopted this romantic treatment or made no attempt to solve the secret of its origin.

Meanwhile, though half a century has elapsed, the questions as to how the case started, who the plaintiff and defendant really were, what forces were behind them, and what their motives were, have remained uninvestigated, and the complete story of this famous lawsuit, largely

based upon documentary evidence, is here for the first time recorded.

IN 1787 Mr. Nathan Dane, a Representative from Massachusetts, introduced an Ordinance in Congress excluding slavery from the territory northwest of the Ohio, including the present States of Ohio, Indiana, Illinois, Michigan, and Wisconsin, and the measure was almost unanimously carried, the only vote against it being cast by a member from New York. This peaceful legislation, however, was fated to be the first and last evidence of harmony on the question of slavery. Indeed, the fierce struggle which menaced the existence of the nation for wellnigh eighty years thereafter may fairly be ascribed to its enactment, for the law had no sooner been placed upon the statute-books than its suspension was vigorously, but vainly, demanded by powerful factions under the leadership of the young Territorial Governor, William Henry Harrison, and it was mainly under cover of this constant skirmishing that the lines of battle were formed in 1820 to decide another issue, much more vital to the South, namely, whether Missouri should be admitted to the Union as a free or a slave State.

By this time, however, the opposing hosts were so evenly matched that neither could drive the other from the field, and a deadlock resulting, the advocates of slavery resolved to encompass their end by diplomacy, for, in their opinion, political control of Missouri had become essential to their safety, and their fears were not unfounded. With five or more free States guaranteed by the Ordinance, and with abounding evidence of increasing population and prosperity in the North, it was obvious that the days of the South's supremacy in the national councils were numbered, unless the area of slavery could be enlarged, and of this imperious necessity came the Missouri Compromise, yielding the new State to slavery, but dedicating all the region north of it to freedom.

Neither side fully understood the terms of peace. To the slave-owners they meant an increased majority in the House and Senate, cheaply purchased by the concession of territory apparently unsuited to slavery. To the Free-staters they vindicated a principle, and presented at least a moral barrier to the further aggressions of their opponents. It was not long, however, before explorers and travellers revealed the true nature of the territory conse-

crated to freedom, and realizing that new free States would soon be formed in the fertile region they had unwittingly yielded, the representatives of the slave power resolved to offset this danger by extending their dominion to the south. Of this came the Creek and Seminole wars, the admission of Florida, the American colonization of Texas and its declaration of independence, the resulting war with Mexico, the cession and forced sale of a vast domain from the vanquished enemy, and the annexation of Texas, with the significant provision that four States might be carved out of its generous area.

It was impossible for the opponents of slavery to control this course of events. Military victories and patriotic pride in the extension of the national boundaries at the expense of a foreign foe obscured the real issue. Certainly the eagerness with which the Free-staters accepted the sop, that slavery should be excluded from all the annexed region lying north of the Missouri Compromise line, is proof of their helplessness, for every acre of it lay south of that parallel, and the only value of this farcical concession was its tacit confirmation of the Missouri Compromise.

The full disadvantage of that political bargain, however, did not dawn upon the advocates of slavery until they discovered that even the vast territory wrested from Mexico would not long suffice to maintain them in power. Every State which was admitted from the Northwest meant two votes against slavery in the Senate and decreasing power for its advocates in the House, and the admission of several such States was imminent. Unless, therefore, the Missouri Compromise could be set aside, it was only a question of time when the South would be ousted from power, for there was no further chance of extending the national borders; and realizing that they were again in danger of being surrounded, the proslavery men fought with skill and desperation to pierce their opponents' enfolding line. From such leaders as Reverdy Johnson and Alexander H. Stephens came assertions that if the North had determined to debar slavery from all the new territories, the South could no longer remain in the Union, although they admitted the legal right of the majority in Congress to enact the necessary legislation and despaired of any appeal to the courts. Both these gentlemen were to change their opinions on the legal aspect of

the situation before many years had passed; but meanwhile a convention of States discussing secession at Nashville, Tennessee, and other significant events, lent so menacing an emphasis to their declaration, that even such a stanch opponent as Webster weakened in his resistance to the aggressions of slavery; and the compromises of 1850, involving the admission of California as a free State, the Territorial organization of Utah and New Mexico without the Wilmot Proviso interdicting slavery, the abolition of the slave-trade in the District of Columbia, and the passage of the most drastic fugitive-slave law ever placed on the statute-books were effected.

Encouraged by this success and the election of their Presidential candidate, the slavery advocates pressed their advantage, and, massing their forces on the 25th of May, 1854, they penetrated the ranks of their disorganized opponents, and compelled the surrender of the Missouri Compromise. In the first flush of this stupendous triumph the cause of the victors seemed assured, for the repeal of the famous legislation opened the Northwest to slavery and practically nationalized their favorite institution. It was only for a moment, how-

ever, that they were permitted to indulge this dream of security, for the North greeted the repeal with a roar of indignation, and at the close of the fall elections in 1854 a new danger confronted the dominant party and threatened to turn its victory into defeat. When the repeal was effected the Democrats had a majority of eighty-four in the House of Representatives, but the next election not only wiped out this comfortable margin, but left them in a minority of seventy-five. Concerted action on the part of their opponents meant nothing less, therefore, than the restoration of the Missouri Compromise, and as long as this was even a possibility there was, to their thinking, no safety for the South. The situation was certainly perilous, for though their enemies were divided, the North was aroused as it had never been before, public opinion was rapidly crystallizing, and the shrewd slavery campaigners realized that the advent of a leader would speedily organize the opposition and discipline it into an effective army. To forestall this contingency desperate efforts were made to acquire Cuba by hook or by crook and create more slave States out of that island, but all hope of securing such reinforcements was soon frustrated.

There was yet time, however, to steal a march on the antislavery forces and deliver a blow that would neutralize their efforts should they subsequently unite, and as the wily chiefs of the Democracy were casting about for a feasible plan of action, a strange chance afforded the very opportunity they were seeking.

Years before this crisis was reached, far from the scene of conflict and scarcely within sound of its angry clamors, a little domestic drama had been unfolding which was destined to prove historic. In 1834 there arrived at Rock Island, a military post in Illinois, an army surgeon by the name of John Emerson, who brought with him from Missouri a negro about twenty-four years of age, called Dred Scott, born in Virginia, and formerly the property of Peter Blow, a distinguished citizen of that State. Dr. Emerson was subsequently transferred to Fort Snelling, in that part of Wisconsin Territory which later became Minnesota, and while there Dred Scott, with the consent of his master, married a negress known as Harriet, whom the surgeon had purchased from a certain Major Taliaferro. Of this marriage there were two children, Eliza, born on a Mis-

sissippi steamboat north of Missouri, and Lizzie, born at Jefferson Barracks, a United States army post in Missouri, and when Dr. Emerson returned to his home in St. Louis in 1838 he brought Scott and his family with him. Six years later the doctor died in Davenport, Iowa, leaving a will which was probated in that State, appointing his brother-in-law, John F. A. Sanford,[1] one of his executors, and leaving his property to his wife in trust for his daughter.

Dred Scott was about thirty-four years of age when Dr. Emerson died, and there is evidence that for a time he was kept at army posts, but in less than two years he and his family were returned to St. Louis, and Mrs. Emerson found herself confronted by an embarrassing situation. She did not want to own the slaves, and yet she could not sell them, for people of good standing did not market their negroes except as a punishment for grave offences, and her right to emancipate them was very questionable under the terms of her hus-

[1] This name is incorrectly spelled "Sandford" in the U. S. Supreme Court Reports and other official documents. The writer has examined the original records of the Probate Courts in Davenport and St. Louis, but none of the papers makes direct reference to any slaves owned by Dr. Emerson.

band's will—all the property of the estate having been expressly left *in trust.* Possibly some solution of the difficulty might have been found, but there is no evidence that Mrs. Emerson attempted any, and within a short time she removed from Missouri to Massachusetts, abandoning Dred Scott to his own devices. Had he been a competent workman Scott might have employed his practical freedom to good advantage, but he was apparently a shiftless, incapable specimen of his race, and it was not long before he and his family became charges on the bounty of Taylor Blow, a son of his old-time master and the playmate of his childhood in Virginia. It may well be imagined that this situation was not pleasing to Mr. Blow, for the Scotts were not free, and supporting them was virtually taking care of somebody else's property —a thankless and ungrateful task. If they could be emancipated there might be some satisfaction in protecting them, but encouraging slaves to obtain their freedom was a very delicate matter, and it is not surprising that there is no direct proof that Blow brought Scott to the attention of Field & Hall, a well-known legal firm in St. Louis, though there is little

doubt that he did so with the idea of discovering some legal solution of the difficulty. Messrs. Field & Hall were only too willing to come to the rescue, for with all the facts before them they immediately saw an unusual opportunity to test the law on slavery—and another opportunity which was not to be neglected. Here was a slave who had not only been brought by his owner into Illinois, doubly protected against slavery by the Ordinance of 1787 and its own constitution, but also into a territory where slavery was illegal under the Missouri Compromise and other Congressional legislation. Moreover, his marriage had been contracted on free soil and at least one of his children born beyond the jurisdiction of slavery. A better case for presenting the claim that the removal of slaves into free territory effected their emancipation could not well be imagined.

There is little likelihood, however, that it was this nice point of law or any humanitarian impulses that actuated the attorneys. Indeed, there is every indication that their motives were anything but disinterested, for the papers show that their main object was to pave the way for a suit against the Emerson estate for the twelve years' wages to which Scott would be entitled

should the courts declare that he had been illegally held as a slave since 1834. Had it not been for this ulterior design it is highly improbable that the suit would ever have been defended.

Scott himself probably understood little or nothing about the matter, for he was wholly illiterate, and there is no evidence that he took any particular interest in it. During the fall of 1846, however, he signed his cross to a petition[1] beginning a suit for his freedom by claiming damages for technical false imprisonment and assault and battery against his mistress, Irene Emerson, and it was this action, undoubtedly instigated by attorneys with mercenary motives, that led the way to a *cause célèbre*, destined to make history, and to prove one of the provocations of the Civil War.

Despite the ideal facts supporting their contentions, Messrs. Field & Hall soon met with

[1] The writer's investigations have disclosed the fact that the original papers in this action have been removed from the court files. Diligent effort is now being made to recover them, but at this writing they have not been secured. The clerk's docket, however, and other records (including a second suit begun in 1847 against Dr. Emerson's heirs and subsequently abandoned), fairly demonstrate that the attorneys and the proceedings were as above stated. An action was also begun for Scott's wife, and damages to a considerable amount claimed for her and for the children.

a reverse, for at the April (1847) term of the Circuit Court the presiding judge instructed the jury to bring in a verdict for the defendant, but a new trial was subsequently granted by another Circuit Judge, Alexander Hamilton by name, and in the second trial a verdict was recorded in favor of Scott.[1] This result was not attained, however, until January, 1850, over three years after the litigation started, and the end was not even then in sight, for the Emerson estate immediately appealed to the Supreme Court of Missouri, and there the matter rested for over two years more. Scott's attorneys, however, could afford to take their time, for during all this period their client had been in the hands of the sheriff, that official having been ordered by the court to hire him out during the pendency of the action and account for his wages to the successful party on its determination, so his earnings were safely secured and there was no reason for haste. The costs, moreover, were guaranteed to the owner, in case she succeeded, by a bond which shows that Taylor Blow was behind the case, for the surety was his son-in-law, Joseph Charless.

[1] Unsuccessful appeals were taken by the defendant from this order. See 11 Mo. Reps., 413.

It was March, 1852, six years after the action started *and two years before the Missouri Compromise was repealed*, that the Supreme Court took up the case of "Scott (a man of color) *vs.* Emerson," and a more unpropitious moment for the negro and his interested advisers cannot be imagined. Sectional disputes over the slavery question were raging fiercely throughout the country, but nowhere more bitterly than in Missouri, and the brief submitted by Lyman Decatur Norris, of the firm of Garland & Norris, for the defence, well reflects the spirit of the times. Slavery agitation he denounced "*as a species of Black Vomit that ever has and will, we hope, continue to carry unfledged statesmen and higher-law demagogues to the grave of political oblivion!*" and these gusty periods, interspersed with poetical quotations, so impressed the official reporter that he paid the writer the unusual compliment of printing his effusion in full. Nevertheless, the document was not without legal authority, and its review of the existing precedents demonstrated that although Lord Mansfield's celebrated doctrine in the Somersett case had been generally accepted, to the effect that a slave who once set foot on free soil became emancipated, the status

of such a freedman on his return to a slave country was still an open question in the United States.

The Supreme Court of Missouri, however, was in no mood to discuss nice questions of law, and by a vote of two to one it ruled against the plaintiff, Judge Scott remanding his namesake to slavery in an opinion more notable as a political tract than as a judicial utterance, and Judge Gamble dissenting in a similar spirit, both jurists displaying more temper than erudition.[1]

With this angry clash between the highest judges in the State, Scott's case in the local courts ended, and under ordinary circumstances it would never have been heard of again, for it had no national significance whatsoever, and the only foundation of the vague stories which have ascribed its origin to the deep-laid schemes of slavery politicians is the fact that it was supported and kept in the courts for eight years by Taylor Blow, a pronounced sympathizer with the South.

But at this juncture, however, politics or

[1] See 15 Mo. Reps., 557–559, which records plaintiff's counsel as D. B. Hill. This is evidently a misprint for D. N. Hall, junior partner of Field & Hall.

patriotism intervened, for one Chauvette E. La Beaume,[1] a lawyer related by marriage to Taylor Blow, approached Roswell M. Field,[2] one of the best-known lawyers in St. Louis, in regard to the case, advising him that Mrs. Emerson had in 1850 married Dr. Calvin C. Chaffee, a physician of Springfield, Massachusetts and a member of Congress from that State. It was therefore possible to describe her as a resident of Massachusetts and allege that Scott was a citizen of Missouri, thus creating an issue between citizens of different States, which would carry the case into the Federal courts, and the new attorney recommended this course. To have his wife appear as a slave-owner, opposing a negro's claim to freedom, would, however, have been extremely embarrassing to the Massachusetts doctor, who was personally and politically opposed to slavery, and there is every indication that, to avoid this, the nominal ownership of Scott and his family was transferred to Mrs. Chaffee's brother,

[1] Hitherto unpublished autograph letter from Field to Montgomery Blair, in possession of the writer through courtesy of the present Mr. Montgomery Blair. Le Beaume undoubtedly acted for Blow, who endeavored to conceal his interest in the case until it reached the Federal courts.

[2] No relation of the A. P. Field, of Field & Hall, the original attorneys.

John F. A. Sanford, a resident of New York. This move left the legal situation unchanged, and in November, 1853, six months before the repeal of the Missouri Compromise, Field instituted a new action for Scott in the United States Circuit Court for the District of Missouri.[1]

The preliminary moves in this momentous litigation were quickly and quietly taken, and only a few weeks before the Missouri Compromise was set aside, a jury, under the instructions of the local Federal judge, rendered a verdict declaring Scott and his family the lawful property of the defendant, and Mr. Field immediately appealed to the Supreme Court at Washington.[2]

Up to this point there is no evidence that any political party was behind the suit, but not long after Mr. Field filed his appeal the anxious leaders of the South, alarmed by the clamor of

[1] This action, No. 692 Circuit Court of the United States, District of Missouri, was brought November 2, 1853, for Scott, his wife, and children, $9000 damages being claimed in the complaint. The assault and imprisonment charged in the document were nominal rather than real, and the story that Scott was cruelly beaten by his master has no foundation. Taylor Blow openly became Scott's bondsman. Araba N. Crane, a native of Vermont, then a young lawyer in Mr. Field's office, actively assisted him in the case.

[2] This appeal was taken May 15, 1854. The Missouri Compromise was set aside May 25, 1854.

their opponents for the restoration of the Missouri Compromise, awoke to its political possibilities. Here was a case actually on the docket of the highest legal tribunal, in which the Missouri Compromise was invoked to sustain the freedom of a negro who had resided in the territory which it had dedicated to freedom. A better chance to declare the Compromise and all similar restrictions against slavery unconstitutional could not possibly have been provided. The existence of such a case was not only opportune for the slavery interests, but positively providential, and, properly handled, it bid fair to place the enemy in their power, *for if the Court could be induced to declare the famous Compromise unconstitutional, further agitation for restoring it would be utterly futile.* A great opportunity lay before the South, and her able representatives lost no time in grasping it.

Meanwhile, Mr. Field was perfecting his plans without the slightest suspicion that he was playing into his opponents' hands; and assuming, as he undoubtedly did, that the Supreme Court was free of political taint, there was nothing to put him on his guard, for the law was strongly in his favor. Doubtless he had considered the

effect of an adverse decision, but there is proof [1] that he believed, as Taylor Blow probably did, that it would be better for the country to have the vexed question of slavery restrictions decided contrary to his wishes than not to have it settled at all, and the legal precedents justified him in regarding the chances as in his favor. To the familiars of the Capitol, however, who remembered that five out of the nine judges were from slave States, and who knew the political leanings of every member of the bench, the die seemed already cast which was to seal slavery as a national institution, and the prospect must have rejoiced their hearts.

At this crisis the case practically passed out of the hands of Messrs. Garland & Norris, who had hitherto represented Scott's owners, and volunteer counsel of national reputation assumed complete control. In Missouri, United States Senator Henry S. Geyer, the unquestioned leader of the St. Louis bar, whose defeat of Thomas H. Benton had demonstrated his political importance, offered his services, and with him was associated Reverdy Johnson, ex-Attorney-General of the United States, a jurist

[1] Autograph letter of Field to Blair, December 24, 1854, hereafter quoted.

known from one end of the country to the other. It was certainly strange that Johnson, who had previously declared his belief that it was hopeless to appeal to the courts against slavery restrictions, should have thrown himself into the breach; but the times had changed since the great advocate had despaired of judicial relief, and both he and Alexander H. Stephens, who had shared his earlier views, and who was to prove a not unimportant factor in the result, doubtless understood the situation thoroughly.

In the meantime, Mr. Field had been searching for legal assistance, and on the 24th of December, 1854, he wrote Montgomery Blair, at Washington, as follows: "A year ago I was employed to bring a suit in favor of one Dred Scott, a black man held in slavery. . . . The question involved is the much-vexed one whether the removal by the master of his slave to Illinois or Wisconsin works an absolute emancipation. . . . If you or any other gentleman at W. should feel interest enough in the case to give it such attention as to bring it to a hearing and decision by the Court, the cause of humanity may perhaps be subserved; *at all events, a much-disputed question would be settled by the highest courts of the*

nation. . . . It is so late on the docket that it will hardly be reached this term." [1]

This letter not only sets at rest the oft-repeated stories that the litigation was instigated by the Blairs or their adherents, but demonstrates the motives of those who brought it to the attention of the Federal Court.

Mr. Field's intimation that there would be ample time for the distinguished counsel to prepare himself for the contest proved well-founded, for it was not until February 11, 1856, more than a year after his letter was written, that the case was argued, and even then its importance was so little realized that the newspapers devoted scarcely any attention to it; and as time passed by without any decision from the Court, its existence was apparently forgotten.

It was not forgotten by the politicians, however, and the surrounding circumstances clearly indicate that they were already at the elbows of the judges, whispering in their ears. Certain it is that the judicial deliberations were sus-

[1] From a hitherto unpublished letter courteously loaned to the writer by Montgomery Blair, Esq. The italics are the writer's. The Statement of Facts agreed upon between the attorneys as reported in 19 How. (U. S.) is inaccurate in many particulars touching Scott's history.

piciously prolonged, and that any decision—especially one nationalizing slavery—would have been extremely embarrassing to the managers of Mr. Buchanan's pending campaign for the Presidency, the success of which was considered vital to Southern interests. Finally, on May 12, 1856, came the solemn announcement that certain technicalities raised by the pleadings required a reargument of the whole case, and another hearing was set for the December term—when the Presidential contest would be safely out of the way.

A few days before the reargument, Montgomery Blair called to his assistance George Ticknor Curtis,[1] of Boston, brother of Justice Benjamin R. Curtis, and when, on December 15, 1856, the case was again reached, these two able lawyers presented it with masterly effect for the plaintiff, Reverdy Johnson and Senator Geyer again responding with equal force for the defence, each side occupying the attention of the court for two entire days.

It would have been well for the bench had the judges listened to no other arguments than

[1] Mr. Blair previously attempted to retain other distinguished counsel, but none of them would serve. (Blair to Editor *National Intelligencer*, December 24, 1856.)

those presented to them in open court by the able advocates, and for a time it seemed as though the case would be disposed of in regular course. Almost immediately after the final argument it was taken up in the judges' private conference, and a majority voted to affirm the decision of the court below, Judge Nelson being assigned to write a brief opinion, which was to avoid all reference to the constitutionality or unconstitutionality of such restrictions as the Ordinance of 1787 and the Missouri Compromise, and merely commit the Court to an affirmance of the decision of the State Court, treating the issues as local questions with which the Federal tribunal was not inclined to interfere.

Before Mr. Justice Nelson could prepare this opinion, however, the active agents of the slave power intervened. At dinners, receptions, and social functions of all sorts they waylaid the judges, adroitly importuning them to change their plan, flattering those whose vanity gave the necessary opening, appealing to the ambition of others, and generally emphasizing the opportunity which lay before the Court to fulfil a public and patriotic duty by forever quieting a discussion injurious to the country's welfare. Declare all such restrictions against slavery as

the Missouri Compromise unconstitutional, it was urged, and the North will acquiesce and the Union be preserved. Avoid the issue, and the agitation will precipitate a national disaster. All of the judges were honest and conscientious, but some of them were far advanced in age, the political excitement was intense, and the pressure which was constantly brought to bear upon them was well calculated to disturb their judgment.

The most active and persistent of the emissaries who thus approached the jurists was undoubtedly Alexander H. Stephens, and his labors began fully six months before a decision was announced. On December 15, 1856, he wrote to a friend as follows: "I have been urging all the influence I could bring to bear upon the Supreme Court to get them to postpone no longer the case in the Missouri Restriction, but to decide it," and that his influence was potent is demonstrated by a later letter in which he wrote: "The decision (of the Dred Scott case) will be a marked epoch in our history. From what I hear *sub rosa* it will be according to my own opinion on every point as abstract political questions. The restriction of 1820 will be declared unconstitutional. The

judges are writing out their opinions . . . seriatim. The Chief-Justice will give an elaborate one."

How an outsider came to be so intimately acquainted with what was happening in the secret conclaves of the judges has never been disclosed, but the information was accurate in every particular, and bears evidence of having been obtained at first hand, for shortly after Justice Nelson had been authorized to prepare his opinion another judicial conference had been held, at which it was decided to change the plan already agreed upon, and to meet the expectation of the public by passing directly upon the political issues involved. This, of course, meant nothing less than a declaration that Territorial restrictions against slavery were unlawful, and from the moment this step was decided upon all the judges were busy with their law-books and their pens. Thus the time slipped by without any announcement from the Court, and it was not until the 4th of March, 1857, that an intimation reached the public of the Court's intentions. That intimation, however, came from a high authority, for President Buchanan in his inaugural referred to the issue of slavery in the Territories as a "judicial question which legiti-

mately belongs to the Supreme Court of the United States, before whom it is now pending, and will, it is understood, be speedily and finally settled."

It is not remarkable that the Chief Magistrate of the nation should have been accurately informed of the Court's intentions, with Stephens and other insiders at his elbow, and two days after his inaugural prophecy the decision was officially announced declaring all slavery restrictions unconstitutional, six judges voluminously supporting the Chief-Justice's exhaustive opinion, and two bitterly attacking the views of the majority.

For a time the public did not realize what had happened, but the Northern press quickly made the matter plain, and a storm of indignation followed. That seven judges, five of whom were from slave States, and all of whom were affiliated with the Democrats, should officiously decide the slavery issue for the whole country by forever nationalizing the institution, roused the free States to the point of fury. Nothing that had previously happened—not even the repeal of the Missouri Compromise—so clearly demonstrated the fixed determination of the slave power to coerce the North, and from that

time forward public opinion in the free States rapidly solidified. Moreover, the unfortunate wording of Chief-Justice Taney's opinion gave strong grounds for charging that he had announced the brutal doctrine that a negro "has no rights which a white man was bound to respect," and this offensive sentence focussed the popular wrath upon him. Thousands of copies of his opinion were printed with those of the dissenting judges, Curtis and McLean, and scattered broadcast over the country. Seward openly denounced the Court, unjustly hinting at connivance with the Executive; Lincoln exposed its doctrines with remorseless logic; mass-meetings and newspapers attacked them in the North, while the whole South rang with applause; and in less than a fortnight Dred Scott had become a national character, and his suit for assault and battery a *cause célèbre*.

Eighteen months later it was still a leading issue in the great debate between Douglas and Lincoln, the latter using it with terrible effect against his adversary, and it was Douglas's refusal to abide by the decision in its entirety that in 1860 cost him the Democratic nomination, and hopelessly split the party.

Meanwhile, Dr. Chaffee had quietly arranged

for the transfer of Scott and his family to Taylor Blow, in order that their legal ownership might be vested in a resident of Missouri having power under the State laws to grant manumission, and in May, 1857, the four slaves were officially freed.

Neither of the parties in this great legal battle lived to see the war that followed it. John F. A. Sanford died almost directly after the decision, and Scott fell a victim to consumption on September 17, 1858, in St. Louis, his death being scarcely noted in the fierce political excitement then raging. But though he died in poverty and neglect, and the location of his grave is uncertain, the famous case with which his name is linked will outlast any monument, and as a pawn in the great contest over slavery his fame is forever assured.

V

THE IMPEACHMENT OF ANDREW JOHNSON: A HISTORIC MOOT CASE

HAD a foreigner, unacquainted with American politics, unwittingly selected the morning of March 30, 1868, for a tour of the national Capitol, he might well have imagined, on approaching the seat of government, that a social function of some description was impending in the Halls of Congress, for fashionably dressed women were arriving in carriages and flocking up the broad stairway, and had the visitor proceeded undaunted into the rotunda he would have found himself surrounded by ladies in gala attire.

Even a stranger, left to his own conjectures, would have speedily discerned, however, that whatever else the affair might be, it was decidedly exclusive, for although many fair guests were apparently called, and all were obviously clad in wedding-garments, comparatively few

were chosen, and the credentials of those few were subjected to a rigid scrutiny before their possessors were allowed to pass the door-keepers of the Senate galleries. It was no easy task which had devolved upon those officials that glorious spring morning. Matrons and maidens besieged them on every side, arguing, explaining, expostulating, and beguiling, and a buzz of gentle excitement and indignation filled the air. The door-keepers were not, however, without previous experience, and scores of fair applicants were turned away with scant ceremony, venting their grievances in such open fashion that any one who chose to listen speedily learned that the ticket system governing admission to Andrew Johnson's impeachment trial was a gross infringement of American liberty, a scandalous abuse of political patronage, and generally an outrage.

It was repeatedly asserted, without contradiction, that Congressmen and Senators had disposed of their privileges to the highest bidders, and that speculators were marketing the coveted cards of invitation at fabulous prices. Details of this nefarious business were lacking and something might fairly have been allowed for the disappointment of the angry

gossips, but accusations against politicians are credited on general principles, and it would not have been prudent for any ticket hawker to have offered his wares in the vicinity of the Capitol at the opening of the greatest State trial in the history of the republic. Fortunately, however, no such miscreant appeared, and the identity of the money-making statesmen has never been revealed.

By eleven o'clock the rotunda and the lobbies of both Houses were crowded with citizens, but very few of the masculine gender sought admittance to the guarded entrance. Representatives of the Diplomatic Corps and belated journalists drifted in with the procession of the feminine elect; but with those privileged exceptions every available post of observation was occupied by the fair sex long before noon, and the gay spring gowns and bonnets gave a color and brilliance to the galleries which contrasted strangely with the sombre scene upon the floor. Indeed, the visitors presented a picture rarely, if ever, equalled in the history of the Chamber. All Washington was represented behind the fluttering fans—not only political Washington, but diplomatic, literary, artistic, and generally exclusive Washington. It was not every day that

wives and daughters of Senators, to say nothing of Congressmen, had an opportunity of meeting the social leaders of the other sets upon common ground, and almost every visitor was a subject of comment to every other as the spectators rustled, stirred, hummed, and buzzed regardless of the distinguished statesmen droning through routine business upon the Senate floor.

Doubtless most of the fair onlookers knew more of the personal history of their neighbors than they did of the merits of the great controversy which had occasioned the gathering, and their attendance was not to afford them much enlightenment. Probably all that the majority knew or cared to know was that the President of the United States had been impeached by the House and was about to be tried by the Senate for high crimes and misdemeanors; but the particulars of the indictment were not matters of common knowledge, for the contest between the Executive and Congress was not a burning political issue discussed in every household. To the leaders of society it had been a tiresome and complicated business, but it had resulted in an Occasion—and the Occasion was unquestionably great.

Even in the diplomatic circles the events

which had culminated in the impending trial were but imperfectly understood, and possibly no one in the brilliant audience, that laughed and chattered in the galleries, fully comprehended the situation, except the representatives of the press.

The newspaper men, however, were familiar with every phase of the mighty struggle over the reconstruction of the seceded States — a struggle inaugurated before Booth had removed the one man who might have proved equal to the perilous emergency and whose tact and self-sacrifice might have saved the South from humiliation and the entire nation from irremediable mistakes. They knew that Andrew Johnson had inherited a task utterly beyond his powers, and they had watched his clumsy but courageous efforts to handle it with intense interest but with little sympathy, for the President was not a man of personal magnetism who touched the imagination. He was a coarse-fibred, right-hearted, strong-headed, fearless, honest fighter who neither asked nor gave quarter—a good hater, without the qualities which rally and inspire friends—a determined rather than a heroic figure, even when battling for the right. The little group of journalists in

the press gallery above the Vice-President's chair, had heard his early denunciations of the South applauded and approved by the radical leaders of the House and Senate, and they had watched his gradual change of attitude and honest effort to conform his impulsive programme to the magnanimous policy of his illustrious predecessor with misgiving.

No one who had studied the man as they had could have failed to foresee trouble when his own State—Tennessee—was denied representation in the national councils; and when the Executive answered that affront with a veto of the Freedman's Bureau bill every trained observer interpreted his action as a challenge, and it required no gift of prophecy to predict that the defiance would be instantly met and answered by the leaders of Congress—men every whit as resolute and masterful as he. Indeed, covert hostilities had preceded this first blow in the open. And before the public realized what was happening a bitter family feud was completing the ruin of the South.

Only the blindest of partisans now deny that the President had the best interests of the whole nation at heart in his championing of the seceded States, and even the severest critics of

Congress admit the sincerity of its leaders in safeguarding the principles which had been settled on the field of battle. Both sides unquestionably desired the same result, but Johnson had in an unguarded moment declared his belief that the salvation of the country lay with the old Democratic party, and such heresy from the lips of a Republican President aroused every radical to the point of frenzy. From that instant a momentous national problem was at the mercy of party politics, and compromise was hopeless.

To the President's plan of conciliation and forgiveness his adversaries opposed a policy of coercion; to his vetoes they responded by packing the Senate and overriding his objections with shouts of exultation; to his insistence upon the letter of the Constitution they replied with sweeping amendments. But neither threats nor obstructions intimidated or discouraged the Executive, and he closed with the opposition, grimly determined to fight to the bitter end, regardless of the consequences to himself or others. The fanatics no sooner disposed of one exasperating veto than another, equally well drawn and maddeningly logical, was thrust upon them, and the game of check and countercheck continued until Johnson's veto record far

surpassed that of any other President, and bade fair to equal that of all his predecessors combined. It was speedily demonstrated, however, that this direct assault would never succeed in dislodging the legislative enemy; but there remained the mighty engine of official patronage, and it was not long before the unruly House and Senate found themselves attacked upon the flank. This move against their henchmen seriously alarmed the leaders of the dominant party, for they instantly realized that wholesale removals from office would destroy discipline and possibly force a compromise, or even a complete capitulation to "the great criminal of the White House." Not a moment was to be lost if the army of office-holders was to be protected from rout or capture, and the Tenure-of-Office bill was speedily passed to avert the threatened catastrophe. This measure virtually left the President powerless to remove any official without the approval of the Senate. In its original form the bill had expressly excepted members of the cabinet from its protection, but this concession did not meet with the concurrence of the House, which was in no mood to leave Andrew Johnson even a vestige of authority, and a compromise was effected by

substituting for the plain exception a proviso that members of the cabinet should respectively hold their offices during the term of the President by whom they had been appointed and for one month afterwards—as vague and cowardly a phraseology as ever disgraced a public statute. Having disarmed their hated antagonist, the rabid party leaders then turned their undivided attention upon his wards, and in a frenzy of retaliation they enacted legislation which ultimately reduced the South to the level of conquered provinces, and forced unqualified suffrage upon the entire Union—burdens and disgraces shared and suffered by the nation at large.

In all this disastrous business the radicals had had a powerful ally in Edwin M. Stanton, Secretary of War, and when the President was no longer able to endure the increasing arrogance and opposition of this important member of his official family and removed him from office, the House received the news with open exultation. More than one exasperated Representative had previously expressed the wish that Johnson would violate some of the obnoxious laws which had been forced upon him; but, as time passed, all hope of catching him derelict

in his duties had practically faded. But finally Providence in the dubious shape of the Tenure-of-Office Act had delivered him into their hands, and with indecorous haste and amid riotous rejoicings the President of the United States was impeached by the House upon charges promptly presented at the bar of the Senate.

At first the removal of Stanton was thought to be an all-sufficient provocation, but craftier counsels prevailed, and a ponderous bill of impeachment resulted, embracing all Johnson's alleged offences, from the misdemeanor of malfeasance in office to the high crime of bad manners. In fact, so multifarious and divergent were the accusations against the President that it is not surprising that some of the guests in the crowded galleries supposed that the Chief Magistrate was on trial for inebriety, others that he had committed treason, and still others that he was an accessory to Lincoln's assassination, as had so often been loosely charged in the Halls of Congress. Probably none of these speculations, however, troubled the fair visitors as the Senate dawdled through its unfinished business. There were other and more interesting matters demanding attention in the assembling company —important information to be asked and given

concerning the distinguished occupants of the diplomatic gallery and other centres of interest, fine points of fashion to be noted and criticised —and the Chamber was a babel of busy tongues when the sergeant-at-arms rose and commanded silence.

In the sudden hush which followed many of the late-comers studied the scene below them for the first time, and a glance over the floor showed every Senator in his place but one. That vacancy was speedily filled, however, for as the sergeant-at-arms ceased speaking, a tall, clean-shaven, amiable-looking man about fifty years of age vacated the Vice-President's chair and took the one unoccupied Senatorial post. The reporters in the press-gallery nudged one another and nodded significantly as they noted this move on the part of the presiding officer, for, despite his declarations that he would assert all his privileges, it was not generally believed that Senator Benjamin F. Wade, Vice-President and heir apparent to the throne, would have the temerity to take his place as one of Andrew Johnson's judges and vote himself into the Presidency. That silent exchange of seats, however, removed all doubts, and every impartial observer, cognizant of the facts, felt

that the Senator from Ohio had committed an offence, not only against good taste but against good morals and justice, which at the very outset cast a doubt upon the integrity of the Court. But the significance of this ugly circumstance was not comprehended by the mass of spectators, and conversation had already begun again when the Chief-Justice of the United States, the Hon. Salmon P. Chase, robed in his official black gown, was ushered into the Chamber and assumed his place as presiding officer.

With the advent of this distinguished jurist the scene became more impressive, and as he faced the curved rows of desks behind which sat fifty-four Senators, representing twenty-seven States and nearly forty millions of people, the assemblage seemed to take on more dignity and meaning. The attention of the audience, however, was speedily diverted from the imposing presence of the judge by proclamation announcing the counsel of the President, and from a side room five men entered the Chamber and seated themselves at a table placed at the right of the Chief-Justice.

The chair nearest the assembled Senators was assigned to Henry Stanbery, ex-Attorney-General of the United States, who had resigned his

office to devote himself to the case at bar, and whose careful preparation for both attack and defence was to be shown in every phase of the proceeding.

To the left of Stanbery sat Judge Benjamin Curtis, ex-Justice of the Supreme Court, writer of one of the two dissenting opinions in the Dred Scott case, leader of the Massachusetts bar, and known throughout the country as one of the most distinguished jurists of his day. Curtis was present at a great personal sacrifice and practically without compensation, and none of his associates accomplished more for the cause. Beside Curtis sat one of the ablest lawyers of Tennessee, Judge Thomas Nelson, a warm personal friend of the accused, who represented him in what might be termed his individual as distinguished from his official capacity, and who brought more personal feeling into the contest than any of the President's other counsel. Nelson's reputation in the profession was merely local, but the man at his immediate left was well known to the bar throughout the country, and his keen, thin face and tall, lank figure were familiar to many laymen in the audience, for William M. Evarts was no stranger in Washington. He was then only at the threshold of his

great legal career, but his professional reputation was firmly established in his own State, and there were but few lawyers not prominent in politics more widely known throughout the country.

Partially screened from observation by these imposing legal luminaries sat William Groesbeck, of Cincinnati, a lawyer of grave and modest demeanor, as yet a stranger to the public, but destined before the trial closed to make himself known from one end of the country to the other.

There had been nothing spectacular or even formal about the entrance of the President's counsel, but their quiet, dignified bearing and businesslike gravity impressed even the casual observer with a feeling of confidence. The moment they had assumed their places another proclamation announced "the Honorable Managers on behalf of the House of Representatives," and six men marched into the Chamber, two by two, each couple linking arms, and the interest of the audience immediately centred upon one of the leaders—a man whose large, pudgy body seemed literally bursting out of his extraordinary swallow-tail coat, exposing a broad expanse of not too immaculate linen, and whose massive

bald head with its little fringe of oily curls was probably familiar to every occupant of the galleries, for Benjamin Butler had not hidden his light under a bushel. There was power in the man's coarse, big-featured face, force and aggressiveness in every line, but his curiously ill-mated eyes with their half-closed lids, his hard mouth and small, drooping mustache, all combined to create an uncomfortable impression of cunning and insincerity, and his whole personality was unattractive. Accompanying this pugnacious leader were five men well known to the best-informed spectators as prominent Congressmen and active opponents of the President's policies. Of these Boutwell and Bingham were able lawyers, but neither Williams nor Wilson, the chairman, was a lawyer of recognized ability, and John A. Logan, whose long black hair and flowing mustache added picturesqueness to the scene, had no reputation whatsoever in the courts.

All eyes were still focussed on these official prosecutors, when the attention of the audience was suddenly diverted to a solitary figure moving towards the bar of the Senate, and several of the managers rose as a feeble and emaciated old man, leaning heavily upon a cane and pain-

fully dragging a crippled foot along the floor, approached their table. The appearance of the new-comer was pitiful in every way, but one glance at his fierce, aggressive face, with its high protruding cheek-bones, grim mouth, and blazing eyes, was sufficient to convince the observer that pity would be misplaced. Even in his prime and at his most vindictive moments Thaddeus Stevens had never appeared more implacable and vengeful than he did when, with the hand of death upon his shoulder, he crawled into the Senate-chamber to aid in the prosecution of his bitterest enemy. With the fanatical zeal of the early Abolitionists, Stevens had carried his hatred of slavery to the point where he regarded himself as the Heaven-appointed avenger of the negroes and the scourge of the South, and all who checked or even questioned his mission became the objects of his ungovernable wrath. To his mind Andrew Johnson was a traitor plotting to restore slavery and the slave power, and in this belief he had fought him with the rage of a maniac for three years. Essentially a man of peace, he virtually thirsted for Andrew Johnson's blood, and though wasted in body and bowed with years he still had sufficient strength to trail his victim. In-

deed, as he declined a silent invitation to a place at the managers' table, and drawing a chair apart from his associates, settled himself to watch the proceedings, his sallow, thin, hawklike face, piercing eyes, and coarse black wig suggested an aged Indian intent upon his prey. The contrast between his sinister frailty and Butler's brutal vitality was suggestive, and as the two men faced the galleries the whole impeachment stood personified. Butler embodied the prosecution in the flesh—Stevens in the spirit.

The judge, jury, and counsel for the respective parties being present, the sergeant-at-arms announced the accusers, and the House of Representatives entered the Chamber, headed by the Speaker and the Hon. Elihu B. Washburne, leaning upon the arm of the Clerk of the House. It had evidently been intended that this entrance of the accusing body should be the most impressive feature of the solemn proceedings, but the effect was marred by the anxiety of the rear ranks to obtain good seats, and instead of a stately and orderly procession something very like a scramble ensued. On former impeachment trials the Senators had occupied raised platforms erected on either side of the Chief-

Justice, but on this occasion they had voted to keep their usual seats, and cane-bottomed chairs had been placed in the rear of the Chamber and in the aisles between the desks; and every available square inch was required to accommodate the one hundred and ninety members of the Lower House and those entitled to the privileges of the floor.

The august tribunal was now complete, and in the hush which followed the somewhat noisy seating of the House the spectators leaned forward, expectantly awaiting the President's entrance. Every one knew that he had not attended the preliminary sessions of the Court, but it was the popular belief that he would make his appearance on the day of trial. Johnson had, however, no intention of giving his enemies any such satisfaction, and in this and all other respects his attitude in maintaining the dignity of his mighty office was absolutely beyond criticism.

The absence of the accused was naturally a disappointment to the mass of spectators, but the presence of both Houses of Congress, the Chief-Justice of the United States, the distinguished counsel, and the occasion of the assemblage afforded a spectacle never equalled in the

history of the country. To the foreigners the proceedings were, of course, wanting in the pomp and circumstance customary in European affairs of state. There were no resplendent uniforms or picturesque observances; nothing, in fact, to catch the eye, give color to the picture, or touch the imagination, and the dull, sombre aspect of the Chamber and the absence of majestic official ceremonies naturally disappointed the Diplomatic Corps.

The simple democracy of the gathering should have appealed to all Americans, however; and yet, strangely enough, it utterly failed to impress the best-informed element in the galleries, and more than one thoughtful observer vainly sought a satisfactory reason for the obvious apathy. Possibly it was the presence of Wade, prepared to render a judicial decision upon an issue vital to his personal interests; perhaps it was the sight of Sumner, an open opponent of the accused, and other equally biased partisans, calmly sitting as judges sworn to administer impartial justice; mayhap it was the notorious Butler and the relentless Stevens and the other party politicians representing the prosecution; possibly it was the flimsiness of the charge, the tricky wording of the statute involved in the accusa-

tion, and the technical character of its alleged violation; doubtless it was some or all of these ominous circumstances which instinctively chilled enthusiasm and forbade respect, and before many hours the conduct of the proceedings had utterly stifled all impulse to patriotic pride.

The various proclamations and the assembling of the Court had occupied less than half an hour, and without further loss of time the Chief-Justice formally opened the trial by directing that the minutes of the last session be read, at the conclusion of which ceremony Butler immediately rose and faced the Senate.

In some respects "the hero of Fort Fisher" was better qualified for his task than many of his associates. No abler expounder of casuistry ever addressed a jury, and his doctrine that law was "anything plausibly presented and persistently maintained" had been the key-note of his professional career. In the case at bar there were practically no facts at issue; there were only law points. Disregarding the groundless and insincere charges interpolated into the indictment to bolster up the real accusation, the Court was asked to decide whether or not the President had violated the Tenure-of-Office Act in removing Stanton, *assuming that the*

office of the Secretary of War was protected by the terms of that act. In other words, the whole cause was built upon an assumed state of facts, hearsay evidence, and rumor, and was in effect *a moot case.* But this was the sort of material in which Butler fairly revelled, and of which he could probably have made more before a jury than any other lawyer of his day. But although the case was suited to his talents, the jury was not the ordinary collection of laymen to which the sophistical advocate was accustomed. Of the fifty-four Senators who faced Butler, no less than forty-four were lawyers—many of them jurists of no mean caliber—men familiar with the tricks of the trade, and not only trained to distinguish between sophistry and logic, but qualified to know a lawyer from a limb of the law.

Seldom in the history of the courts has a member of the bar been called upon to address a similar body of legal experts, and despite his ingenuity and plausibility, Butler was not the type of practitioner whose utterances on questions of law carry weight with the profession. Indeed, he himself probably suspected the disadvantages under which he labored, for instead of trusting to his fluent powers of

speech, he armed himself with a great sheaf of notes, and proceeded to read a carefully prepared address, which soon set the galleries yawning, but delighted the reporters, who gratefully laid aside their pads and pencils, knowing that copies of the harangue could be had for the asking.

Despite his obvious efforts to adapt himself to his learned audience and avoid his customary forensic methods, the speaker's opening was eminently characteristic. He informed his hearers that the Senate, organized as a Court of Impeachment, was not a court; that not being a court, it was bound by no precedents, and that being bound by no precedents it could make its own rules of evidence and generally be "a law unto itself." Having announced this convenient theory, which was certainly well adapted for a case destitute of all legal proof, he proceeded to demonstrate its soundness by quoting precedents from one of the most monumental briefs ever submitted to a court of law, utterly oblivious of the humor of hurling authorities at a tribunal supposed to be "a law unto itself." This preliminary fiction was, however, only a forerunner of those that were to follow, and starting with the proposition

that Johnson was merely filling out Lincoln's unexpired term, the champion casuist argued that Stanton could not be removed from office under the Tenure-of-Office Act because he had been appointed by Lincoln, and the law protected all officials during the term of the President by whom they had been appointed. Johnson's term being Lincoln's term, the President had violated the law by removing the Secretary of War, and thereby forfeited his office. The jury-exhorter then turned to the more familiar field of cheap invective, and the bored and sleepy audience roused itself to listen to stormy eloquence in which the President's opposition to the Congress was denounced as criminal, and wordy chastisement administered for the sin of criticising political opponents. A little of this diversion, however, soon palled upon the galleries, and at the end of three hours the orator relieved the suffering visitors by closing with a panegyric on the great example which the American people were about to afford the wondering nations of the earth by peacefully removing an obnoxious ruler, "while your king, O Monarchist! if he becomes a tyrant, can only be displaced through revolution, bloodshed, and civil war!" This absurd fustian must have

fairly disgusted those Senators who knew in their heart of hearts that the power of impeachment was being misused for party purposes. Indeed, before the weary day ended there was some evidence of a reaction in the President's favor, and the case had already begun to totter.

There was plenty of elbow-room in the galleries at the next session, but the proceedings had scarcely opened when the most interesting and important question of the whole trial was presented, the decision of which was destined to have a far-reaching result. In ordinary courts of law the presiding justice passes upon the admissibility of all evidence, but the moment Judge Chase attempted to exert this prerogative his authority was challenged. The Senate and not the Chief-Justice was the proper judge of what testimony should be admitted or excluded, contended the managers, who for some mysterious reason suspected Chase of favoring the accused, and after a sharp debate the Senators decided that they would reserve to themselves the right of deciding what testimony they should hear. The motive of this extraordinary move was only too obvious. It was the sort of justice which the cur proposed for the mouse in *Alice's Wonderland:*

"I'll be judge—I'll be jury!"
Said cunning old Fury.
"I'll try the whole cause
And condemn you to death!"

and the final outcome can be directly traced to this flagrant impropriety.

It is extremely doubtful if there ever was a trial in which fewer facts were in dispute than in the case at bar, but for six days the managers struggled to substantiate the voluminous impeachment, at the end of which period all that was proved was what stood admitted by the pleadings—namely, that the President had attempted to remove his Secretary of War, and that some two years previous to this more than doubtful offence he had indulged in undignified utterances at the expense of his political enemies.

On the 9th of April, the prosecution having rested, Judge Curtis opened for the defence before an audience filling every nook and cranny of the Chamber. Curtis enjoyed a very different reputation in the profession from the leading counsel for the prosecution. He was a jurist of recognized authority, and there was no lawyer in the Senate but could well afford to receive instruction from his lips. Well aware of Butler's failure to impress his fellow-practitioners,

the speaker addressed the tribunal with admirable dignity and tact, speaking without notes, and arguing as a lawyer to lawyers, every sentence aimed at the best professional talent among the Republicans of the Chamber. In the little group of Democrats there were several lawyers of national repute, but their votes were assured, whereas there were a dozen or more Republicans open to legal persuasion, and if even a small minority of those men could be won from party allegiance by a purely intellectual appeal, all danger of conviction would be over.

With a knowledge born of long experience in the appellate courts the distinguished advocate instantly struck at the heart of the case, demolishing Butler's "law unto itself" theory with a sentence, and attacking the cowardly worded Tenure-of-Office Act, showing that it was not intended to prevent the President from removing Stanton, or if it were, that it was so badly constructed that it had utterly failed to effect its purpose.

"I am here," he began, "to speak to the Senate of the United States sitting in its judicial capacity as a Court of Impeachment presided over by the Chief-Justice of the United States for the trial of the President of the United

States. . . . The Honorable Managers have informed you that this is not a court, and whatever may be the character of this body it is bound by no law. . . . Each one of you before you took your place here called God to witness that he would administer impartial justice in this case according to the Constitution and the laws."

If any one imagined, continued the speaker, that this oath invested him with authority to make up his own laws as occasion required, or as his desires dictated, his ideas of administering impartial justice were not those approved in the profession of the law.

Butler's whole argument was shattered by this blow, and his elaborate fiction that Johnson's term was Lincoln's was almost as speedily exposed. "At the time of Mr. Stanton's removal, was he under the protection of the statute entitling cabinet officers to hold their positions during the term of the President who appointed them?" inquired the jurist. "The Honorable Managers say yes," he continued, "because they say Mr. Johnson is merely serving out the residue of Mr. Lincoln's term. But is that so? The (Presidential) limit of four years is not an absolute limit. Death is a

limit. A conditional limitation, as the lawyers call it, is imposed on the tenure of his office. There is no more propriety in calling the term during which Mr. Johnson holds the office of President a part of Mr. Lincoln's term than there would be in saying that one sovereign who succeeds another by death holds a part of his predecessor's reign."

This terse, logical, legal presentment of the main issue caught and held the attention of every lawyer in the Chamber, and at the close of his masterly dissection of the eleven articles Curtis might safely have rested his case, for devotion to the law was second nature to some of the Senate, and despite the bias and passion of party feuds they responded to the professional touch.

There was at least one layman, however, among the open-minded Senators to whom the strictly legal argument may not have appealed with convincing force; but at the close of Curtis's remarkable address, which occupied the best part of two days, an episode occurred which was calculated to arouse the indignation of laymen and lawyers alike.

General Lorenzo Thomas, a respected officer of the army, appointed by the President as

Secretary of War *ad interim* after Stanton's removal, was called to the stand to show, among other things, that Johnson's purpose in appointing him was to create an issue for the courts, and thus decide the constitutionality of the Tenure-of-Office Act. General Thomas was an amiable man, well advanced in years, soldierly in appearance and bearing, and when he took the stand, dressed in full uniform, and gave his testimony, it was evident, despite his amusing loquacity, that he desired to relate the few facts within his knowledge as accurately as possible. But the unsophisticated witness gave Butler an opportunity to play to the galleries, and knowing his man, and having, so the story goes, an old grudge to settle dating back to his removal as military Governor of Louisiana, he attacked the General on cross-examination with all the weapons at the command of an unscrupulous practitioner, hectoring and bullying the honest old soldier, and tricking him into contradictions and foolish answers, until the thoughtless in the gallery roared.

This sorry exhibition was soon followed, however, by an outrage so gross that it discredited the whole proceeding, and gave the finishing-touch to the managers' blundering

campaign. In the gorgeous uniform of a lieutenant-general, Sherman took the stand and proceeded to testify that the President had offered to appoint him Secretary of War on the understanding that the legality of his appointment should be tested in the courts, the object of the testimony being to show Mr. Johnson's good faith, but the prosecution immediately objected to any proof of the President's motives; and when Gideon Welles, Secretary of the Navy, took the stand to report the deliberations of the cabinet over the Tenure-of-Office Act, Butler and his assistants were instantly up in arms.

In vain the defence protested that the President, being charged with an intentional violation of the laws, should be permitted to refute the motive attributed to his conduct, but the managers knew the vital importance of the proposed testimony, and they fought it tooth and nail. Finally the Chief-Justice ruled that the proof was relevant and admissible, but, a Senator objecting, the question was submitted to the Senate, which promptly overruled the highest judicial authority in the country and refused to listen to the proof.

A more shameless denial of justice can scarcely be imagined; but the President's counsel were

men of unlimited resource and indomitable courage, and they straightway devised a means of spreading the facts upon the record indirectly, with the same or even greater force than they would have had if introduced directly. Without the loss of a moment Mr. Evarts arose and calmly offered to prove on behalf of his client that the members of the cabinet (including Mr. Stanton) had advised the President that the Tenure-of-Office bill was unconstitutional, and that the duty of preparing the veto message had been assigned to Mr. Stanton himself, and would have been written by him had he not been in ill health, and that, as it was, he had actually assisted Seward in draughting it.

The sensation created by this announcement can well be imagined, for it practically demonstrated that the President was being arraigned for following the counsel of the friend and ally of his accusers, but the partisan Senators sought to cover their consternation by solemnly voting to reject the proposed proof.

With significant calmness and a challenging gaze from which there was no escape, Mr. Evarts then offered to prove that the President had submitted the question as to whether or not Mr. Lincoln's appointees were subject to removal un-

der the Tenure-of-Office Act to the members of his cabinet, *including Mr. Stanton*, and had been advised by them that he could remove any such appointee. *In other words, that Mr. Stanton, the protégé of Congress, whose dismissal was declared criminal by the impeachment, had himself approved the President's criminality.*

All this testimony was deemed proper by the Chief-Justice, but his decision was challenged and reversed by the majority of the Senate, callous to all pleas but party expediency, and not one word of testimony on any of these vital subjects was permitted. The exclusion of these facts, however, spoke louder than words. Public opinion throughout the country instantly revolted at this indecent attempt to suppress the truth, and more than one stanch Republican Senator became disgusted at such mockery of justice.

Secretary Welles having been forced to leave the stand without testifying, it was useless, in the face of the Senate's rulings, to prolong the struggle, and on the sixteenth day of the trial Mr. Evarts and his associates rested their case. The Senators thereupon voted a short adjournment to enable the respective counsel to prepare for the summing up.

Possibly no body of men anywhere in the world was better equipped than the Senate to withstand the deluge of words which was to descend upon it during the succeeding fortnight. Logan mercifully reduced his contribution to writing, and Stanbery, Wilson, and Stevens were incapacitated by illness from taking more than a nominal part in the oratorical contest; but Boutwell, Williams, Bingham, Nelson, Groesbeck, and Evarts drained the language in their efforts to support and refute the charges against the President, without apparently convincing even one of their auditors by anything they said, for Butler and Curtis had covered the entire case in their respective openings, and there was nothing in the testimony which changed the situation.

Nelson's address was mainly notable for its passionate eulogy of the President, and Williams's, while less notable, was correspondingly bitter in denunciation. Much had been expected of Boutwell, but he not only failed to rise to the occasion, but exposed himself to unsparing ridicule by indulging in childishly extravagant metaphor and exaggeration. Indeed, Evarts almost laughed the case out of court at his expense, and the jaded Senate

actually listened when the great New York lawyer, in the course of a masterful speech, turned aside to flay his indiscreet opponent.

With the empty issue at bar it was wellnigh hopeless for any advocate to rise to great heights, but Evarts and Groesbeck almost achieved the impossible, and the Cincinnati lawyer, who had remained unobtrusively in the background until he rose to make his argument, not only relieved the tedium of the theme, but forced the tribute of unremitting attention from his hearers, and won the only legal reputation which resulted directly from the trial.

Bingham's long closing address was in no way remarkable, either for adroitness or eloquence, but the personnel of the galleries was very different from that of the opening days, and at the conclusion of his harangue he was greeted with a burst of suspiciously unprovoked applause, which continued until the galleries were cleared, the exhausted Senators speedily following the ejected public with the relief of prisoners released from torture.

But although the formal arguments were closed, the wavering Senators had no sooner left the Chamber than they found themselves subjected to a very different sort of persuasion

from that which had been officially urged upon them, and for almost two weeks they were pestered, persecuted, and actually threatened with every form of political and private argument in the effort to make their opinions conform to that of the majority.

Despite the unparalleled efforts which had been made to anticipate the judgment of the Court, the event was still in doubt when the Senate assembled on the sixteenth day of May to record its verdict, and the galleries were again crowded to their utmost capacity, while great throngs of spectators were massed in and around the Capitol. By noon all the managers were present and all the President's counsel except Judge Curtis; every Senator, with the exception of Grimes and Howard, was at his post; the entire House of Representatives was in attendance; the Chief-Justice occupied the chair, and just before the Chamber was called to order the doors opened, and Howard, who had arrived at the Capitol on a stretcher, was practically carried to his seat. Howard's vote was regarded as pledged to conviction, and the hopes of the President's enemies rose at his appearance. There now remained only one vacant place, and that of a man likely to favor the accused.

The Chief-Justice's gavel fell, and after the majority of the members had decreed that the last article of the impeachment should be the first voted upon, Edmunds broke the solemn silence by moving that the Senate proceed to judgment. Glancing anxiously over the room, Senator Fessenden rose to urge an adjournment until Grimes could be present, but before his plea was concluded the doors again opened, the missing Senator, more dead than alive, was supported to his place, and the High Court of Impeachment presented a full bench.

Acting upon the order of the Senate, the Chief-Justice thereupon directed the secretary to read the last article of the impeachment, the one count in the long indictment which was so worded as to insure a stronger vote than any of the other ten; and at the conclusion of this formality Judge Chase rose, and facing the fascinated audience, commanded the secretary to call the roll.

The first Senator in alphabetical order was Anthony, of Rhode Island, one of the waverers suspected of party disloyalty and the subject of much attention during the adjournment, and as he rose and faced the Chief-Justice a death-like stillness settled upon the Chamber.

"Mr. Senator Anthony, how say you?" questioned the distinguished jurist. "Is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high misdemeanor as charged in this article?"

"Guilty," answered the suspected Senator, and the managers and party leaders settled back comfortably in their chairs.

Hundreds of pencils kept tally as the voting proceeded, and it was soon apparent that party discipline was being strictly maintained, the Democrats without exception recording negative votes, and the Republicans exhibiting unbroken ranks. Indeed, Simon Cameron was so zealous in his party allegiance that he blurted out "guilty!" before the Chief-Justice completed his question, and for a moment the solemnity of the proceedings was threatened by the titter which greeted his performance. Suddenly, however, there was a sound which dismayed some of the satisfied managers, for Senator Fessenden, of Maine, answered "not guilty" to the presiding officer's inquiry, and destroyed all hope of complete party harmony. Fessenden's loyalty had been long under suspicion, but there were those who believed that neither he nor any other Senator would dare oppose the majority at the

final hour. Nevertheless, Grimes struggled to his feet a few moments later and recorded his belief in the President's innocence, and Henderson, of Missouri, followed his example. Before the clerk reached the name of Senator Ross, of Kansas, however, twenty-four votes had been recorded for conviction, ten more were practically pledged, and only thirty-six were necessary to convict.

Ross was a silent man, who had wrapped himself in a mantle of dignity and refused to discuss the case or to allow any one to approach him concerning it outside the Senate Chamber, and his opinion was the only one about which no information of any sort had been procurable. If he voted "guilty," the impeachment was almost certain of success; if "not guilty," his example on the wavering Republicans might work disaster, and the audience sat spellbound as the Chief-Justice voiced his solemn question. Then for the first time Ross broke his exemplary silence and recorded a vote of acquittal. From that tense moment the hopes of the party politicians sank, flickering fitfully after Lyman Trumbull refused to follow their dictation, and disappearing as Van Winkle placed his independence upon record,

leaving Wade to the inglorious distinction of futilely recording a vote in favor of elevating himself into the Presidential chair.

But the final vote, thirty-five to nineteen, lacking only one of conviction, was too nearly a party triumph to justify surrender, and under whip and spur other votes were subsequently forced on the second and third articles with the same result. Then the disappointed majority, determined that the President should not enjoy the satisfaction of a complete acquittal, adjourned *sine die* without taking a vote on the remaining articles, the crowd in the galleries and corridors melted away, and the momentous impeachment ended.

Quietly retiring to Tennessee at the expiration of his Presidential term, Andrew Johnson began to plan the most dramatic return to public life recorded in American history. Offering himself as a candidate for the United States Senate, he entered heart and soul into the fierce campaigns that followed, and undeterred by reverses, delays, disappointments, and well-nigh insurmountable obstacles, fought for the only vindication he craved. At last, seven years after the great trial, he entered the Chamber which had witnessed his arraignment,

and standing before his former judges on the very spot where his enemies had hoped to see him crushed and humbled, and gazing steadily into the eyes of Vice-President Wilson, he took the oath of office as a Senator from Tennessee.

Then and not till then did the curtain fall upon the first and only impeachment of a President of the United States.

VI

THE *ALABAMA* ARBITRATION: AN INTERNATIONAL LAWSUIT

THE Hôtel de Ville of Geneva, Switzerland, an unpretentious public building of ancient origin, became the centre of interest for at least two of the great family of nations on June 15, 1872, and attracted the attention of the entire diplomatic world, for on that day the arbitrators of the *Alabama* claims were to meet within its walls and attempt to settle an international dispute which had more than once brought England and America to the verge of war. Had it been absolutely certain that the officials would proceed with their work on the appointed day, there would, perhaps, have been less general interest in the event, but for months it had been an open secret that England was in anything but an amicable mood, and there were rumors that she intended at the last moment to withdraw from the arbitration and

repudiate the treaty by which it had been authorized.

But although the political sky was dark, a fairer morning never dawned than that which greeted Geneva on the day of trial. Long before noon a group of experienced newspaper men, including several well-known English and American special correspondents, gathered at the Hôtel de Ville; but as they lounged about its picturesque entrance, comparing notes on the coming event, it was speedily discovered that none of them possessed any inside information. Beyond the fact that all the arbitrators were in town, and that both the contending nations were fully represented by close-mouthed counsel, there was no news to report. Rumor still had it, however, that England would repudiate her agreement to arbitrate; and if she did so, it was said that America would demand judgment against her by default, no matter what the consequences might be. There was another report that the clash had already occurred, and that the arbitrators had abandoned their mission and would not even attempt to hold a session; but this was soon contradicted by the arrival of porters and messengers bearing books and papers for the tribunal, and as they

carried their heavy burdens through the paved court-yard to the cobble-stone stairway, up which in early times the State dignitaries rode their horses to the council-chamber, the journalists hastily followed them, intent upon reporting every preliminary detail. At the door of the "Salle des Conférences," however, they were summarily halted by a Swiss functionary in scarlet and yellow, who politely but firmly informed them that none but the arbitrators and the English and American officials were to be admitted to the audience-chamber. Disappointing as this announcement was, it did not discourage the special correspondents, who relied on the influence of their journals to obtain the usual privileges, little dreaming that in the guarding of its secrets and in many other respects the impending proceeding was to create new precedents and furnish notable exceptions to several well-established rules. Meanwhile, all the reporters, great and small, remained in the anteroom, watching the stacks of books disappear through the guarded door, and vaguely wondering how many of those ponderous tomes the arbitrators had actually read.

The American *Case*, as the history of the claims was called, was indeed a small library in

itself, consisting of no less than eight bulky volumes, comprising more than five thousand printed pages, and the English documents filled three similar books of nearly three thousand more. These eleven volumes, numerous sets of which had been prepared in French as well as in English, were, however, merely the preliminary pleadings which had been exchanged by the parties when the tribunal of arbitration had been formally organized on December 5th of the previous year. Three months later the agents of the respective governments had submitted "counter cases," and these supplementary proofs had added six more volumes to the record, of which England had contributed four and America two. But although this mass of evidence was discouraging to the laymen, it was far less formidable than it looked, and every well equipped correspondent of the press was already more or less familiar with the American *Case*, the contents of which had exasperated England to the point of repudiating a solemn treaty. Indeed, the wide-spread discussion of those volumes had given the foreign press a knowledge of the controversy which it would never have otherwise possessed, and as public attention had been particularly attracted to

America's documents, the story of her grievance was far more generally understood than was England's defence.

That story was ably told in the official pages —not, perhaps, with all the allowances and reserves which a wholly judicial review would demand—but with earnest conviction and scrupulous fidelity. It opened with a recital of the events leading to the Civil War in the United States, and disclosing the prompt request of the Secretary of State that no decisive action should be taken by the English government touching its attitude towards the contending forces until the newly appointed American minister, then on his way to London, could communicate the views of his government. Nevertheless, it appeared that the first news which had greeted Mr. Adams on his arrival had been the Queen's proclamation of neutrality, and before he had been long at his post the unfriendly attitude of official England became painfully apparent. Another American had, seemingly, more influence with the English government than the accredited diplomat, for Captain James Bulloch, late of the United States navy, was busy at the port of Liverpool executing commissions for the Confederate government, and all Mr. Adams's

official protests against his activities fell upon unheeding ears. In vain he reported that a vessel called the *Oreto*, in course of construction at the Miller yards at Birkenhead, was designed for a hostile errand against the United States. The Foreign Office was polite but incredulous, replying that official inspection by the customs officials failed to disclose any irregularity or to confirm the minister's suspicions in any manner. Undiscouraged by this rebuff, Mr. Adams advised Lord Russell of the situation day after day, by word of mouth and written communication, and warned him of the inevitable result, until finally the *Oreto* sailed away to become the *Florida*, and begin the work of driving American commerce from the seas.

Meanwhile the keel of a mysterious vessel known as the *290* had been laid at the Lairds' yards in Birkenhead, and Mr. Adams soon reported Captain Bulloch's interest in her, following this with surprisingly accurate details of her construction and mission; but all the investigations of the English officials failed to unearth what Mr. Adams's agents had readily discovered. The *290*, it was admitted, might possibly be adapted for a war-vessel, but there were no guns upon her, and her mysterious numerals merely

indicated her dock-yard name, she being the 290th vessel constructed by the Lairds.[1] Her real name, according to the records, was the *Enrica*, by which she had been regularly christened at her launching, and there was, to the official mind, no cause for her detention. All this was solemnly reported by the Foreign Office, and it was almost impossible for the American minister to appear unconscious of the veiled insincerity of these official communications. But Mr. Adams shut his ears to all that ruffled the temper, and, keeping his eyes wide open, began preparing a case against Great Britain, knowing that sooner or later there must be a day of reckoning. In order that there might be no mistake, however, as to the legal bearing of his proofs, he submitted them to an English jurist of high authority, who expressed his opinion that the laws of England were being violated. Fortified with this decision, he once more visited the Foreign Office and called the facts and the legal opinion directly to Lord

[1] By an extraordinary coincidence the existing United States battle-ship *Alabama* was the 290th vessel constructed by the Cramps at Philadelphia, and was known by that number in the yards. Messrs. Cramp inform the writer that this was not the result of design, but of business sequence. Their 289th vessel was a ferry-boat called *Pittsburg*, the 290th the *Alabama*, and the 291st the Japanese cruiser *Kasagi*.

Russell's attention. Representations of this nature, of course, could not well be disregarded by the government, but it was slow to act upon them; and Captain Bulloch, receiving inside information that the authorities were contemplating the seizure of his vessel, took advantage of the delay to arrange a "trial trip" for the *Enrica*, which proved so eminently satisfactory that she never returned to her dock. After a short stay at another British port she sailed for the Azores, where an English steamer met her with her arms and equipment, and with an English crew she sped away as the *Alabama* to capture and destroy all the unarmed commercial marine of the United States that crossed her path.

Meanwhile, Mr. Adams continued to exercise the utmost vigilance in England. With even temper, exhaustless patience, and faultless phrase he warned the Foreign Office of the Confederate plans, and unremittingly supplied unwelcome information touching the infractions of English and international law, studiously disregarding official discourtesies, and remaining calm under exasperating hinderances and delays. Once, and once only, was he provoked into an exhibition of feeling, but when it became probable that two

iron-clad rams whose character and purpose he had clearly exposed to the authorities would soon be delivered to Captain Bulloch and follow the *Alabama*, he closed his review of the facts with the significant utterance, "*It would be superfluous for me to point out to your Lordship that this is war.*" Those words penned by a man whose reserve, dignity, and patience had already impressed Lord Russell startled him to instant action, and the outcome of the war being no longer in doubt, the British government found no difficulty in enforcing the law.

Such, in brief, was the history of the events recorded in the American *Case*. It was not this statement, however, at which England had taken offence. The facts were substantially admitted, but *the claims under the facts* were in serious dispute, and the complications which threatened the arbitration with disaster did not appear in the formal record.

At the close of hostilities it had become Mr. Adams's duty to call attention to the claims of his government for the depredations committed by the *Alabama* and many other vessels wholly or partially equipped in England or sheltered in British ports, but his presentation of this matter at once met with a cold reception at

the Foreign Office. Again and again he courteously invited Lord Russell's consideration of the question without eliciting any satisfactory response, and finally it was intimated that her Majesty's ministers did not desire that the matter should be further pressed upon their attention, as the issues raised did not admit of discussion. With courtly phrase the experienced diplomat regretted his inability to comply with their Lordships' suggestion, or to accept the conclusions at which they had arrived. He had laid the foundations of his case with infinite skill and could well afford to wait, but he had no intention of allowing the issues to be forgotten. From time to time, therefore, he renewed his representations, advising the ministry that they were made in the most amicable spirit and that there was no form of friendly arbitration or adjustment to which the United States would not willingly agree. These pacific advances, however, met with no encouragement from the British government. There was, in the opinion of official England, nothing to arbitrate, and it was confidently believed that America had no serious intention of insisting upon any substantial settlement of the matter in dispute.

Meanwhile public opinion in the United States was intensely hostile to England, and nothing but the experience of a long and bloody war kept the popular feeling in check. Indeed, there had been more than one suggestion at the close of hostilities, that, with a veteran army of more than a million men in the field and the strongest navy afloat, the time was ripe to enforce recognition of the claims; but better counsels had prevailed and the whole question was allowed to remain in abeyance awaiting diplomatic treatment. Nevertheless, the strained relations between the two countries continued, and when a change in the British ministry occurred and it became evident that America was not content to let the matter rest, the Johnson-Clarendon treaty was negotiated and submitted to the Senate at Washington. When it was discovered, however, that this treaty was modelled upon the old Claims treaty of 1853, and merely provided for the reciprocal submission of individual claims by citizens of each country against the other, its fate was sealed. In a speech of great power Sumner attacked it in the Senate, denouncing it as wholly incompatible with the dignity of the United States and utterly ineffective to secure a proper reconciliation. America would never win

the respect of England or of any other nation, he maintained, by accepting such a disposition of a national question. The treaty merely provided for the adjustment of a bundle of individual claims—the real issues were not touched. There was not a word in the entire document which recognized any duty that England had owed to the United States in the past, or which afforded any guarantee for the future, nor was there even a suggestion of regret on England's part for the injuries inflicted upon the United States, or any indication as to who the real complainant was. No such treatment of the grave questions at issue would be tolerated in America, he declared, and the Senate promptly supported his view by rejecting the treaty by an overwhelming vote, only one member being recorded in its favor.

This emphatic action startled and irritated the British ministry and aroused deep resentment throughout the country. The mere suggestion that England ought to apologize for her conduct rendered further discussion impossible in the opinion of most Englishmen, and the very idea of such presumption would have been laughed at had it not been so annoying. America, it was felt, had been pressing the considera-

tion of her claims for years, and when at last England had consented to discuss the matter the Senate had treated the concession with contempt. Natural as this conclusion was, it evidenced a complete misunderstanding of the nature of America's grievance, and for this the United States representatives were unquestionably to blame, for they should never have approved a treaty so entirely inadequate to meet the national demands. Still, the mischief was done, and it would have been utterly useless to attempt further negotiations in the existing state of public opinion on both sides of the Atlantic. The subject was therefore allowed to drop until 1871, when it was suddenly brought to a head by as skilful a move as was ever credited to a department of state.

In a message to Congress, President Grant reported that as Great Britain did not appear willing to concede that the United States had any just cause of complaint, he recommended that a commission be appointed to take proof of the private claims for damages suffered from the *Alabama* or other vessels, with authority to settle the same by purchase, *so that the United States might own and control all such demands against Great Britain.* This quiet and

significant manœuvre, coupled with the fear that the Franco-Prussian quarrel might draw England into war and render her own views of neutrality highly inconvenient, almost immediately resulted in unofficial advances from the British government, whose indifference towards the subject in dispute gave way to an undisguised anxiety for a prompt adjustment.

The preliminaries of this second negotiation were conducted with great prudence, every step being carefully considered, both sides realizing that another failure would arouse lasting resentment and embarrassment. Private unofficial conferences finally paved the way for the appointment of a Joint High Commission empowered to meet at Washington and negotiate a treaty for the settlement of all differences; and when the distinguished commissioners agreed upon a treaty providing for arbitration, it was confidently supposed that all the troublesome questions had been forever laid at rest.

Certainly the document approved by the Joint High Commissioners seemed to meet all the objections which had been so forcibly urged against the Johnson-Clarendon treaty. In the first place, its expressed purpose was to provide for "the amicable adjustment of *all* causes of

difference between the two countries"—a distinct recognition of the *national* character of the dispute. In the second place, it specifically referred to "the claims of the United States generally known as the *Alabama* claims," and expressed "*the regret felt by her Majesty's government for the escape, under whatever circumstances, of the 'Alabama' and other vessels from British ports and for the depredations committed by those vessels*"—a most acceptable substitute for the "impossible" apology. Next it laid down certain rules or principles of international law upon which it should be assumed that England had undertaken to act in the past, and which both nations agreed to observe in the future, and finally it provided for an impartial board of arbitration with ample powers to adjust all outstanding grievances. In a word, the document was a complete diplomatic triumph for the United States, and a virtual acknowledgment of the justice of the issues for which it had so long contended.

The arbitration clauses in particular left nothing to be desired. Their recitals read that "in order to remove *all* complaints and claims on the part of the United States, and for the speedy settlement of such claims," the contracting

parties agreed that *all* said claims be referred to a tribunal of arbitration consisting of five persons to be appointed respectively by the President of the United States, the Queen of England, the King of Italy, the President of the Swiss Confederation, and the Emperor of Brazil, who should meet at Geneva "to examine and decide *all questions which should be laid before them* by either Great Britain or the United States," and that the award of the arbitrators should be accepted as a full, perfect, and final settlement of all claims, *whether the same were or were not laid before the tribunal.* This disposition of the matter naturally met with the hearty approval of all Americans, and the Senate having promptly ratified the treaty, the arbitrators were appointed and the preparation of the American *Case* assigned to Mr. J. C. Bancroft Davis, the First Assistant Secretary of State, whose thorough study of the subject eminently qualified him for the task.

Mr. Davis had, however, no sooner exchanged his formidable treatise for the British *Case* prepared by the English agent, Lord Tenterden, than the London press began a furious attack upon the nature of the American claims, and a storm of indignant protest immediately followed.

According to the British High Commissioners, it had been distinctly understood that America had waived what was known as the national or indirect claims arising out of the prolongation of the war, the increased payment of insurance, the transfer of the American merchant marine to the British flag, and other similar causes; yet in the face of this understanding the American *Case* called all these matters to the attention of the tribunal, and upon them based an enormous demand for damages. The American representatives protested that they had not waived, and had no right to waive, any of their country's claims, direct or indirect, and that the treaty itself distinctly provided for the settlement "of *all* differences" by arbitrators authorized "to examine and decide *all* questions that should be laid before them by either government." It was, however, pointed out that during the preliminary negotiations the indirect claims had been fully discussed, with the result that the protocol of the treaty recited that the United States estimated its direct claims at fourteen million dollars, and "in the hope of an amicable settlement" made *no* estimate of the indirect losses, "without prejudice, however, to the right to indemnification on their account in the

event of no such settlement being made." The "amicable settlement" contemplated in this recital had been effected, according to the British Commissioners, by the agreement to arbitrate, and the United States had therefore no right to claim damages for the indirect losses or to submit them in any manner to the Court.

There was unquestionably much force in this contention, and in view of the contradictory language of the treaty and the disagreement between the Joint High Commissioners as to its meaning, the United States was willing to leave the whole matter to the arbitrators and let them decide what was and what was not properly in suit. The English newspapers, nevertheless, denounced the whole proceeding, and, charging bad faith, urged the government to repudiate the arbitration unless the United States withdrew the objectionable items. In other words, one of the litigants, and not the court, was to pronounce judgment on part of its adversary's case—or there would be no trial! Not all English statesmen, however, endorsed this reckless programme. Able speakers in Parliament called attention to the fact that one blunder could not be cured by making another. If the British Commissioners were correct in their contention

that the indirect claims had been waived, they should have seen to it that they were expressly excluded by the treaty, instead of employing ambiguous language and opening the way for a misunderstanding. In any event, England could ill afford to insist upon her contentions at the expense of a solemn national engagement. Unanswerable as such arguments were, they were disregarded, and, public opinion supporting the government, Lord Tenterden was instructed to file England's "counter case" under protest and to intimate that his government would not further submit to the jurisdiction of the Court. At this juncture negotiations were attempted to remove the difficulties, but the charges which had been made were of such a nature that very little progress was possible along those lines, and as the day of trial approached, it became evident that England was not unwilling to have the arbitration fail.

Such was the situation when the contending governments faced each other in Geneva on that glorious June morning in the year 1872, and among the excluded journalists, anxiously awaiting the outcome, opinion was divided as to whether the Salle des Conférences was about to

witness a union of the nations or an international breach of promise.

Meanwhile all the parties to the greatest international lawsuit in history were assembled in a large, high-ceilinged, plainly furnished room, with three windows looking out upon the Botanical Gardens. Dark-red curtains hung at the windows, and the rest of the chamber was decorated in harmony with the draperies, giving it a dull, formal, and ceremonious appearance, in keeping with the curved judicial bench erected on a low platform before the windows. Facing this a semicircle of official desks extended to the right and left of the entrance and enclosed several tables covered with books and papers.

At the centre of the judicial desk, with his back to the windows, sat a tall, stout man with short side-whiskers, a bald head, and a round, pleasant face. Although evidently well advanced in age, he carried his years with an unmistakable air of distinction, and his clear eyes and alert bearing bespoke a man in his intellectual prime. This was Count Frederic Sclopis, the arbitrator appointed by the King of Italy and unanimously chosen president of the tribunal, not merely by reason of his seniority, but in recognition of his unquestioned attainments as

a jurist, he being the author of one of the most famous legal treatises in Italy.

Immediately to his left sat the short, stoop-shouldered, studious-looking Brazilian ambassador to France, Baron d'Itajubá, a diplomat of forty years' experience, nominated by the Emperor of Brazil. On the other side of the president sat the youngest of the arbitrators, Jacob Staempfli, a self-made man of strong individuality and marked ability, whose original training had been in the law, but who had held almost every important position under the Swiss government, including the Presidency, to which he had more than once been called. Of all the arbitrators, with the exception of Mr. Adams, this serious-minded statesman was unquestionably the most thoroughly prepared, for he had retired to his country-seat with all the official documents months before the tribunal met and conscientiously devoted himself to the case until he had completely mastered it in every detail. There was, however, nothing distinguished in his personality, and his heavy, stolid, Teutonic face contrasted unfavorably with the clean-cut, handsome features of England's representative.

Sir Alexander Cockburn, Lord Chief-Justice of England, the arbitrator nominated by the

Queen, was in point of scholarship and experience eminently qualified for the important duty to which he had been assigned, but his florid face and aggressively superior manner indicated a temper and a temperament ill adapted to diplomatic success. Affable and courteous enough when nothing was at stake, he was utterly unable to bear opposition, and criticism fairly enraged him. Moreover, he unfortunately chose to regard himself as England's chief defender rather than as her chief jurist, and having come to Geneva convinced that America was seeking an undue advantage from the treaty, he had no inclination to exert himself in saving the situation. In fact, he had already determined on a course which was well calculated to bring the proceedings to a speedy close; but in permitting himself to believe that this result was inevitable, he under-estimated the skill and resourcefulness of his adversaries, who had every reason for wishing the arbitration to proceed. They knew that the treaty by which it had been authorized had placed the United States in the position of plaintiff and forced England into the rôle of an apologetic defendant, and that the principles of international law admitted and guaranteed were of the first importance, and

that every detail of the case had been carefully prepared. No one appreciated the strategic value of these points better than the American arbitrator, Charles Francis Adams, and of all those gathered at the scene of action he had the deepest personal interest in the result. This was the moment for which he had anxiously waited and for which he had prepared himself year after year, and he determined not only that America should retain every advantage she had gained, but that England should be left no loop-hole of escape.

No abler representative than Mr. Adams could possibly have been selected for the work at hand, and his temperament was exactly suited to the dual rôle of judge and advocate which his duties forced upon him. A less accomplished French scholar than Sir Alexander Cockburn, he was far more cosmopolitan and broad-minded, and among cultivated men his attractive personality and intellectual tastes gave him a distinct advantage over the irascible Chief-Justice. Indeed, England and America were perfectly personified by their respective arbitrators. Both were keen, experienced lawyers, mentally well matched, and equally good fighters; but the moment they were pitted against each other

the national characteristics were strongly in evidence.

At the semicircle of desks before the judicial bench sat the counsel—William M. Evarts's thin, sharp, New England face contrasting strangely with Sir Roundell Palmer's clerical countenance. Beside Mr. Evarts—then at the height of his remarkable professional career — sat Morrison Waite, later Chief-Justice of the United States, and near them were General Caleb Cushing and Mr. Charles C. Beaman, Jr., whose special study of the case at bar had made them expert advisers for the United States. Indeed, General Cushing was in age, diplomatic experience, and knowledge of the State Department's business the senior counsel for America, and fairly maintained that position by his active participation in the proceedings. At the other desks sat Professor Mountague Bernard of counsel for England, J. C. Bancroft Davis and Lord Tenterden, the official agents for the respective governments, and the remaining places were occupied by the private secretaries and translators—all young men of legal or diplomatic training.[1]

[1] The American secretaries were Messrs. Brooks Adams, John Davis, Frank W. Hackett, W. F. Pendrick, and Edward T.

Such was the company which Count Sclopis called to order at noon on June 15, 1872, and a more attentive audience probably never greeted a presiding officer, for the fate of the treaty trembled in the balance as the American agent rose, and, claiming the attention of the chair, filed the printed argument required by the rules. The die was then cast, for with that act America had complied with the last formality and stood prepared for action. What response would England make to the challenge? The question was quickly answered, for Lord Tenterden immediately rose and moved that the tribunal adjourn for eight months—a proposition equivalent to adjourning *sine die* and ending the arbitration then and there. This emergency, however, had been thoroughly discussed by the American representatives, and recognizing that England had determined to block the proceedings, they stood prepared to force her hand. Acting by prearrangement with his associates, Mr. Davis opposed the English agent's motion, and suggested as an alternative an adjournment for two days only. This counter-proposition was quick-

Waite: Great Britain's secretaries were Messrs. Sanderson, Markheim, Villiers, Langly, and Hamilton. The secretary of the Arbitration was Monsieur Alex. Favrot.

ly accepted, and within an hour of their arrival all the officials were on their way from the Hôtel de Ville, pursued by the representatives of the press, who in default of other information advised their journals that the officials had dispersed and that the fate of the arbitration was sealed.

No such fiasco, however, was contemplated by the American representative. Calling the other arbitrators together informally, he outlined a proposition that they should deliver an extra-judicial opinion that the national or indirect claims afforded no proper basis for an award by the tribunal, he himself offering to vote in favor of their rejection. No more skilful move than this was ever recorded in diplomatic history, for without necessitating any withdrawal of America's claims, it forced England to accept a judicial disposition of them, which was what she had positively declined to do. Moreover, it demonstrated that America was seeking no undue advantage from the wording of the treaty, and was ready to bow to the authority of the tribunal, only asking that the decision be that of the court to which she had submitted her rights, and not that of her adversary. Had England voluntarily adopted this course, she

might and probably would have succeeded in having the disputed claims rejected and thereby gained a notable victory. Instead of this, she was placed in the unenviable position of having threatened the violation of an international agreement because her demands were not complied with, thereby exhibiting not only disregard of her national obligations, but also lack of confidence in the Court before which the other issues in her case were to be heard—an error which she never retrieved during the subsequent proceedings. Although a judicial disposition of the claims was not to their liking, Sir Alexander Cockburn, Lord Tenterden, and their counsel had no choice but to accept the situation, and a document was immediately drawn embodying Mr. Adams's proposal, which, after revision by the lawyers, was published as the individual and collective judgment of the Court, and the government at Washington having promptly ratified it, England was left without excuse for withdrawing from or further delaying the trial of the real points at issue.

This unexpected turn of affairs placed Sir Alexander Cockburn in a most embarrassing position. So sure had he been that the arbitration would prove abortive that he had come to

Geneva wholly unprepared for any lengthy sojourn and almost entirely ignorant of the merits of his case, and when the sessions were resumed on the morning of June 29th, he speedily found himself at a disadvantage. Annoying as this predicament would have been to any man, it was especially irritating to one of Cockburn's temperament, but the hearings could not be postponed to enable him to study the case, and plunging into the sea of details, he soon found himself beyond his depth, and began striking out right and left in a wild effort to keep his head above water.

By mutual agreement it had been determined to consider the evidence touching each vessel complained of in the American documents separately, and to reach a conclusion as to England's liability, reserving the question of damages for later discussion. Under this method of procedure the history of the *Oreto*, otherwise known as the *Florida*, was the first to occupy the attention of the Court, and difficult questions of law were immediately raised which required clear analysis and careful deliberation. Sir Alexander did not, however, attempt to reason with his associates or persuade them to his point of view. With the voice of authority he endeavored to

force his conclusions upon them, and his discourteous contradictions and ill-disguised contempt of "foreign" opinion were wofully lacking in good taste. Through long service in a court where his word was law he had become intolerant of the opinions of others, and utterly unable to adapt his conduct to the exigencies of the moment. Indeed, the hearings had not proceeded far before he attempted to ride roughshod over the very man whose conscientious and unprejudiced study of the case entitled him to the highest possible consideration. Mr. Staempfli, however, was not a man whom it would have been possible to browbeat with impunity under any circumstances, and his piercing dark eyes instantly responded in unmistakable challenge to Cockburn's first domineering utterance. From that moment the two men were in almost constant collision, and though the forms of courtesy were observed, nearly every interchange between them threatened a serious outbreak. The mere idea of the representative of an inland state having any notions on maritime law was absurdly preposterous to the Chief-Justice's thinking, and he made no secret of his views in this regard. Had he, however, possessed even moderate tact, Sir Alexander could not have

failed to perceive that his overbearing conduct was not only making an open enemy of one of the non-partisan arbitrators, but was seriously prejudicing the other two, for Mr. Staempfli had prepared careful opinions upon all the main issues of the case, and his thorough familiarity with the subject had impressed his colleagues and won their respect. Count Sclopis and Baron d'Itajubá were mild-mannered men of great personal dignity to whom bullying was intolerable, and they noted the Englishman's treatment of the Swiss arbitrator with astonishment and marked disapproval. But Cockburn was either ignorant or careless of the prejudice he was creating, and day after day he blundered along, trampling upon opinions, offending sensibilities, making every question a personal issue, and generally misconducting himself until he had estranged or offended every one of his associates, and not a session passed without witnessing something very like a quarrel.

Mr. Adams, on the other hand, adopted an entirely different course. Recognizing that the success of his cause depended upon the representatives of Italy, Brazil, and Switzerland, he gave careful consideration to their opinions, welcomed their suggestions, answered their ques-

tions, and avoided controversy as far as possible. To the English Arbitrator he was invariably courteous, never displaying the slightest irritation, but never failing to respond effectively to his attacks with facts and figures which demonstrated a convincing familiarity with the subject and influenced the judgment of the Court. Indeed, it was not long before the American diplomat became the controlling force in the arbitration, and the discovery of this fact did not serve to soothe Sir Alexander Cockburn's temper. Moreover, the cause was going decidedly against him, for in considering the record of the *Florida* the majority opinion had been adverse to England's interests.

These reverses and the hot weather combined to exasperate the Chief-Justice, and his encounters with his associates became more and more frequent as the case proceeded. Every day witnessed sharp exchanges between him and Mr. Staempfli, and with Mr. Adams he kept up a running fight in which his increasing irritability often assumed the form of downright affront.

Finally it was decided that the legal champions should have a field-day, and Sir Roundell Palmer delivered a speech of considerable pro-

fundity upon the law of the case. Unfortunately for him, however, it was *his* advice that had governed the action or inaction of the Foreign Office during the Civil War, and as the main question before the tribunal was the soundness of that advice, he was at a disadvantage with his audience which it was difficult for him to overcome.

Mr. Evarts followed with an argument of great power, which was repeatedly interrupted by impatient and sometimes scoffing questions from the Chief-Justice. But here again Sir Alexander damaged his cause, for although his knowledge of the laws of England was authoritative, and his extensive information concerning American diplomatic precedents might have been utilized most effectively, he displayed such bad judgment in handling his material that the opportunity was lost. Moreover, the able advocate whom he undertook to bait had made an exhaustive study of the case, and his answers were so cool and at times so sharp that the questioner was frequently left disconcerted.

Mr. Evarts's argument was delivered in English, but General Caleb Cushing was a French scholar of considerable proficiency, and his address, which was a masterpiece of tact, illus-

trated the difference between the English and the American attack. Sir Roundell Palmer had instructed his hearers upon English law with a scholarship which left little to be desired. But however satisfactory his discourse may have been to the English Arbitrator, who needed no persuasion, there is every indication that it failed to convince or even to interest the representatives of Brazil, Switzerland, and Italy. Mr. Cushing proceeded on entirely different lines. Without attempting any technical discussion he immediately entered upon a broad review of international duties, calling attention to the Italian laws, with which he showed a familiarity as agreeable as it was interesting to the venerable President Count Sclopis. Next he commented upon and commended the Brazilian laws, demonstrating that they recognized the principles of international comity for which America was contending; and then taking up the Swiss laws, he showed how her statesmen had observed and enforced neutrality under geographical and political surroundings of peculiar difficulty. A less skilful speaker might have injured his cause by an *ad hominem* argument of this character, but the entire address was so gracefully and artlessly delivered that its strat-

egy was never offensive and its appeal was far from lost. The very tactfulness of such an approach, however, fretted Sir Alexander, and his antipathy for the speaker, which had been smouldering throughout the sessions, flared into open hostility before the arbitrators went into secret session to consider their award.

Up to this time not one word of news had been obtained by the indefatigable journalists who daily thronged the Hôtel de Ville, and it is probable that never before had the secrets of a great international litigation been so strictly kept. Not even a rumor of the bitter personal struggle that had been fought behind the closed doors for over two months had found its way into print, and although the relations between the English Arbitrator and the other officials had become so strained that they virtually never met except officially, no hint of this condition of affairs had publicly appeared when the arbitrators met on September 14th, to publish their award.

This time the Salle des Conférences was crowded with guests, for the Geneva Conseil d'État had been invited to witness the ceremony, and the members of that body, dressed in official black, were assigned positions behind the judicial desk.

At the centre tables sat the counsel and the agents, and the desks about them were occupied by ladies related to the various officials, while behind them were grouped the young secretaries and translators. At noon Count Sclopis assumed the president's chair, and with him appeared Mr. Adams, Mr. Staempfli, and Baron d'Itajubá, but the place on the president's extreme left, usually occupied by Sir Alexander Cockburn, was vacant, and minute after minute slipped by without witnessing his appearance. Finally at the end of nearly an hour's waiting he arrived, and Count Sclopis proceeded to announce the award, which was in many respects a complete surprise.

England was held responsible for all the depredations of the *Florida*, the *Alabama*, and their tenders or auxiliaries, and for some of the injuries caused by the *Shenandoah*, and fifteen million five hundred thousand dollars was awarded the United States. With an admirable display of fairness, however, and in a strictly judicial spirit, Mr. Adams had decided against the contentions of his own country in the cases of the *Georgia*, the *Sumter*, the *Nashville*, the *Sallie*, the *Tallahassee*, the *Chickamauga*, the *Music*, the *Jefferson Davis*, the *Boston*, and the

Joy, voting only against England in the cases of the *Alabama*, the *Florida*, the *Retribution*, and the *Shenandoah*.

Sir Alexander Cockburn, on the other hand, had voted against the United States and in favor of England in every instance except the *Alabama*, and then only for reasons of his own, with which the rest of his associates disagreed. Moreover, he refused to sign the award at all, and the moment Count Sclopis finished reading it he rose, picked up his hat, and to the intense astonishment of the assembled company, marched out of the room without even a word of farewell to the men with whom he had been daily associated for more than two months.

This extraordinary discourtesy was not, however, the climax of the Chief Justice's indiscretions. In a dissenting opinion of one hundred and eighty pages he attacked the findings of the tribunal in an utterly unjudicial spirit and with a confusion of ideas and disregard of logic unworthy of his talents. In fact, like the Scotch advocate who had lost the thread of his argument,

> "He gaped for't—he groped for't—
> He found it was awa', mon,
> But when his common-sense fell short
> He eked it out wi' law, mon."

The best English opinion sincerely deprecated this futile and ill-advised performance, and public opinion found nothing in the award to provoke anger or criticism. The decision, it is true, marked a diplomatic and legal triumph for the United States which had never been equalled and has never been surpassed, but Englishmen saw that the principles of neutrality which had been established inured to the benefit of both parties, and that international arbitration had been magnificently vindicated by the satisfactory solution of a problem of unparalleled difficulty. Indeed, the result was accepted by England without resentment and with little or no regret, and had her arbitrator recognized the human elements in his cause, and striven to do justice rather than battle for his country, it is more than probable that a far more favorable result would have been her portion.

VII

THE HAYES-TILDEN CONTEST: A POLITICAL ARBITRATION

THE old Senate-chamber in the national Capitol was the political battle-ground of the issues which presaged the Civil War. Within its walls Webster and Hayne voiced the preliminary challenge and defiance of the coming conflict; to its audience Douglas first addressed his arguments for "popular sovereignty"; behind its doors the vote which repealed the Missouri Compromise was recorded; under its roof the Kansas conspiracy found shelter and encouragement; upon its floor Sumner fell under the murderous attack of Brooks; across its desks flew the goading insults of the Free-State men and the furious threats of their opponents; directly beneath it, in the room now occupied as the law library, the Supreme Court announced its decision in the Dred Scott case, and shortly afterwards the Senate surrendered possession of

the Chamber, permeated with the contagion of party strife, to that august tribunal. But though the conflict immediately shifted to the new legislative hall, where all the vicious savageries of the war were soon reflected in the virtuous excess of Reconstruction, it was destined again to invade the scene of its origin. Within its walls the Electoral Commission assembled in February, 1877.

To those who recalled the partisan inheritance of the room, its selection as the meeting-place of jurists charged with the settlement of a vital political question was ominous of disaster, but in other respects no court ever convened under more favorable auspices than those which greeted the extraordinary bench to which the Hayes-Tilden controversy was finally submitted. Invoked as "a tribunal whose authority none could question and whose decision all would accept," it had come into being dowered with the confidence of the public and armed with a mandate to save the people from themselves.

Certainly it was high time that some one or something intervened to avert the unspeakable calamities which threatened the nation, for the Presidential election of the preceding fall had literally torn the country to pieces. Under

the leadership of Tilden, the Democrats had prepared and prosecuted a terrific indictment against the corruption and misgovernment of the administration, and as a result they had secured an impressive popular majority for their candidate, and no less than 184 electoral votes, only one less than the number required for his choice. Hayes had concededly received 166 votes, and nineteen representing South Carolina, Florida, and Louisiana were in dispute. To the impartial observer it seemed impossible that those Democratic strongholds should not yield at least one vote for Tilden; but to the Republican politicians, whose henchmen controlled the canvassing boards, that result appeared not only possible, but probable, and the outcome of the local contests that ensued fully justified their confidence.

The story of those contests was substantially the same in each State, and all were equally humiliating to civic pride. The Democratic majorities on the face of the returns were eliminated by the canvassing boards on charges of negro intimidation irregularly presented and insufficiently proved; protests were ignored and perjuries condoned. The policy of Reconstruction which had forced corrupt government and

negro suffrage upon the South and driven it to physical outrage had now to be sustained by legal outrage, even more demoralizing than the terrorism it had evoked.

Not one redeeming episode marked all this sorry business. To the tricks, perjuries, and gross partisanship of the Republicans, the Democrats responded with counter-tricks, counter-perjuries, and bungling negotiations to bribe corrupt officials, and when each side had obtained certificates supporting the claims of its candidates and forwarded them to Washington, they presented only a shameful choice.

With their control of the election machinery, however, the Republicans had a tactical advantage in that their certificates were issued by recognized officials, while the Democratic documents were less regular upon their face. Nevertheless, in the case of Florida the certificate of the Tilden electors had been passed upon and approved by the highest courts of that State, and the notorious fact that a Democratic majority of not less than six thousand had been suppressed in Louisiana invited close scrutiny of the Republican credentials, and entitled the opposition to the benefit of every doubt.

Who was to decide between these conflicting

returns? That question had been frequently raised, but the Constitution afforded no definite answer, and as no election had previously depended upon the vote of a State claimed by both parties, the issue had been avoided by temporary expedients. Now, however, it was sharply presented, and there was absolutely no precedent governing the situation. The Constitution merely provided that on a certain day the President of the Senate should open the returns in the presence of both Houses, and the vote should then be counted. But here was a case where there were returns to be rejected as well as counted. With whom lay the power to discriminate between them? The Republican Senators gravely answered that it was the duty of the President of their Chamber, who was authorized not only to open and count the returns, but to pass upon their validity. In other words, they claimed that the Constitution intrusted this vitally important matter entirely to the discretion of one man, and that the assembled House and Senate were merely authorized to be present as spectators of his act. This, it was true, had never been done in the history of the republic, and the Democratic majority in the House angrily asserted that it

never should be done. Moreover, they positively declared that no electoral vote whatsoever could or should be counted without the concurrent action of both branches of Congress. If neither candidate received a majority of the votes, then it was contended that the whole matter was relegated to the House of Representatives, which was authorized to elect a President, and that body plainly intimated its entire readiness to assume the responsibility.

Unless these divergent claims could be reconciled the result was only too apparent—Tilden would be declared President by the Democratic House, and Hayes by the Republican Senate; each would set up his own government, and no one could predict what the outcome would be. Already throughout the country there were mutterings of the storm which threatened to rend the nation. Incited by the appeals of irresponsible demagogues, bands of minute-men were enrolled, sworn to seat the Democratic candidate peaceably if possible, but by force if necessary; offers of arms and men were made to the party leaders, taunts and defiances flew in every direction, and very little was wanting to precipitate a national disaster. In the face of this monstrous prospect capital took alarm,

business languished, the government came to a practical standstill, and the enemies of the republic, who had confidently predicted the downfall of its institutions for more than a century, watched the menacing situation with grim satisfaction, laughing in their sleeves and knowingly wagging their heads.

It was at this crisis that sane public opinion asserted itself and forced a peaceful solution of the issue. From all parts of the country and from organizations of every character petitions, resolutions, and memorials poured in upon the assembled legislators, urging and, in fact, demanding that they lay aside their differences and devise some means of settlement, and of this popular pressure came the bill creating the Electoral Commission. It was not without much misgiving and considerable opposition, however, that the bill became a law. Tilden opposed it in the face of his party's approval, and the Republicans fought it tooth and nail. Under the provisions of the act five of the proposed judges were to be selected from the House, which insured the appointment of five Democrats; five were to be nominated by the Senate, which was certain to designate Republicans, and five were to be selected from the

Supreme Court bench — two Republican appointees and two Democratic, these four to name the fifth. Firmly believing that this plan necessitated the selection of Judge David Davis, Lincoln's lifelong friend, who, although originally a Republican, had become an Independent with Democratic leanings, the Democrats almost unanimously supported the measure, and in the general rejoicing over its enactment the voices of Tilden's supporters were clearly dominant. Their joy, however, was short-lived; for after the bill had passed the Senate and while it was being rushed through the House, the independent Republicans and the Democrats in Illinois combined in electing Davis to the Senate, rendering him practically ineligible to serve upon the Commission, and compelling the designation of a Republican to complete "the tribunal whose authority none was to question and whose decision all were to accept."

It was with no little relief that patriotic Americans watched the evolution of this extraordinary court from the chaos of evils which had disgraced the national institutions and threatened them with ruin. To their minds it indicated an awakened public conscience; it evidenced the triumph of patriotism over poli-

tics; it demonstrated the law-abiding instinct of a people fitted for self-government, and promised a redeeming climax to a series of national humiliations. Partisan passion and prejudice had held sway for the moment, but statesmanship and justice promised finally to prevail.

Early on the morning of February 2, 1877, the room which had once sheltered the Senate was besieged by throngs of men and women noisily clamoring for admission; but the Chamber was too small to accommodate more than the invited guests and privileged officials, and the gallery which had not been opened for years was reserved for reporters, editors, newspaper proprietors, and their families. The general public was therefore rigidly excluded, and the audience which gathered under the vigilant eyes of the journalists was more notable, perhaps, than any which had previously awaited the opening of an American court.

Behind the rail sat the diplomatic representatives of almost every foreign country, all the members of the cabinet, the general of the army, the admiral of the navy, officers of both branches of the service, Senators, Congressmen, judges, and distinguished citizens, and at the

counsels' table as remarkable an assemblage of legal talent as ever appeared in any cause.

On the Democratic side sat Charles O'Conor, an advocate almost without a peer in his day. His day, however, was waning fast, and the pale, care-worn face revealed unmistakable traces of pain and illness, and suggested a doubt of his physical fitness for the great struggle which impended. Near this famous champion sat another veteran of the bar, whose massive wigged head, burly personality, and inseparable tobacco-box were familiar to all the courts, for Jeremiah S. Black was known throughout the country for his professional skill. It was natural that these Democratic jurists should have appeared in Tilden's behalf; but associated with them was a man whose presence could not be accounted for by party affiliations, and to those who knew Lyman Trumbull's long friendship with Lincoln and his record as a Republican Senator, his appearance in support of the Democratic claims was suggestive, even though he had not been a strict party man for some years. Not far distant from these distinguished counsel, and apart from his associates, the journalists in the gallery espied Roscoe Conkling sitting absorbed in thought, and instantly the excited

whisper spread that the great Republican champion of the electoral bill intended to cast aside his party allegiance and address the tribunal on behalf of Tilden—a rumor which had some foundation, but no confirmation. Montgomery Blair, Matt H. Carpenter, ex-Judge John A. Campbell of the Supreme Court, Richard T. Merrick, George Hoadley, A. P. Morse, Ashbel Green, and William C. Whitney completed the list of Democratic advisers—all lawyers of marked ability, although Whitney's talents were not then generally recognized, and it was whispered that his relationship to Commissioner Payne was responsible for his presence.

Formidable as was this gathering of legal experts, their opponents, grouped at the other end of the long table, were equally redoubtable. As leading counsel the Republicans had retained William M. Evarts, whose thin, keen face had acquired a network of lines and wrinkles since the day he had defended Andrew Johnson, and whose fame in the *Alabama* case had been still further enhanced by his recent masterful achievements in the Beecher trial, and upon him was destined to fall the brunt of the Democratic attack. Near this experienced chieftain sat a heavily built, confident-looking man with a red

face, sandy whiskers, and broad intellectual forehead, destined, after a fierce struggle, to win a seat on the Supreme Bench as a reward for his services not only in the case at bar, but in the preliminary contests, for Stanley Matthews had fought hard for Hayes in Louisiana, and his name was already familiar to the public. Beside Matthews sat Edward M. Stoughton, a shrewd and resourceful lawyer, and behind them appeared Samuel Shellabarger, Hayes's personal counsel, armed with intimate knowledge of every detail of the controversy, and ready for every legal emergency.

Eleven chairs had been crowded behind the judicial desk, and the bench extended by placing a table at either end, each capable of accommodating two commissioners; but, except for this change and the personnel of the audience, the appearance of the room was the same as it usually presented on court days. With the advent of the commissioners, however, the bench assumed an unfamiliar aspect, for the judges had discarded their official robes in deference to their lay associates; and as the fifteen men took their places before the silent audience, it was noted that they divided upon party lines. Judge Clifford took the Chief-Justice's place, with

Justices Miller and Bradley on his left, and Field and Strong on his right. Then to the left ranged the Republicans, Edmunds, Morton, and Frelinghuysen; and at the right the Democrats, Abbott, Hunton, and Payne, while at one of the tables sat Garfield and Hoar, and at the other Thurman and Bayard—an ominously partisan arrangement extremely disquieting to those who believed that the Senators and Representatives could as easily lay aside their politics as the judges could their robes. Individually and collectively, however, the Commission was unquestionably a remarkable body of men. Seven of its fifteen members were, or had been judges—all were jurists of recognized ability—one was destined to become President, another Secretary of State, another ambassador to England, and others to distinguish themselves in various ways, and their existing public records justified the belief that they would rise superior to all party claims and do impartial justice.

In the pause that followed the seating of the tribunal the attention of the spectators centred for a moment upon Justice Bradley, who had been selected to take the place which the Democrats had designed for Judge Davis, but he was apparently unconscious of the interest he

evoked. His clean-shaven, expressive face indicated strong character and great personal dignity, and his calmness suggested courage and inspired confidence.

It was after twelve when the presiding justice opened the proceedings by recognizing David Dudley Field, brother of Justice Field, and one of the Representatives from New York, who, although he had voted for Hayes, had sought an election to Congress mainly for the purpose of espousing Tilden's cause, and who rose to present the formal objections of the Democrats to the Republican certificate from Florida. Similar objections were likewise offered by Republican representatives to the Democratic certificate, and then the legal battle began.

Complicated as the various objections seemed to be, the Democratic point of attack was apparent and the issue comparatively simple. With great force and persuasive earnestness, O'Conor impeached the eligibility of one of the Republican electors, alleging that he was a Federal office-holder and therefore debarred by the Constitution from acting as an elector, and insisted that testimony be admitted in support of this charge. The strategy of this move was instantly comprehended, however, by the Re-

publican counsel, who saw that it was the opening wedge to an examination of all the facts leading to the issuance of the certificate to the Republican electors, and they determined that no such precedent should be established. Evarts therefore promptly flung down the gauntlet by announcing his contention that the court could consider no question but the regularity of the certificates, and had no power to go behind the returns, and his challenge was instantly accepted. Unless they were permitted to show what had happened before the Board of Canvassers, and in what manner their majorities had been eliminated, the Democrats realized that their cause was lost, and they immediately grappled with the foe. One after another, O'Conor, Black, and Merrick attacked the Republican position, Merrick drawing the enemy's fire in a rapid fusillade of questions from the Republican commissioners, indicating anything but an impartial attitude on their part.

It was at this juncture that Stanley Matthews entered the fray, and his opening words were singularly daring and prophetic. With a swift, almost imperceptible glance at Justice Bradley, he quoted from an essay on Papal Councils, wherein the author, in commenting upon the

belief that they were enlightened by the presence of the Holy Ghost, irreverently remarked that they may have been so favored, but he generally found *that the Spirit had resided in the odd man.*

The words were spoken in jest and were received with laughter, but the bad taste that inspired them was scarcely less offensive than their ominous cynicism to those who cherished the hope of an impartial decision.

Stoughton followed Matthews with a speech of considerable adroitness, and Evarts and O'Conor soon joined battle, employing the heavy artillery of argument behind ramparts of words, until their ammunition was fairly exhausted. Then Justice Field forced the Republican leader into the open, and it required not only courage but downright audacity for Evarts to hold his own under the rapid fire of questions which would have swept a man of less reputation off his feet.

"Suppose the canvassers had made *a mistake* in footing up the returns," suggested the judge, "and suppose that mistake changed the result of the election, and that they discovered it before the electoral vote was counted, would there be no remedy?"

Evarts looked his questioner squarely in the eyes.

"No!" he answered, firmly.

"Then," commented the justice, "a mistake in arithmetic, in the adding up of figures, may elect a President of the United States and the Congress be powerless to prevent it!"

The audience awaited the lawyer's answer with strained attention, but no question had been asked him, and he offered no response. The silence was at last broken by Justice Field, who again advanced to the attack.

"Suppose the canvassers were *bribed*," he began, "or suppose they had entered into a conspiracy to commit a fraud, and in pursuance of that bribery or conspiracy altered the returns, declaring as elected persons not chosen by the voters, and had transmitted the vote to the President of the Senate, but before that vote had been counted the fraud was detected and exposed, would there be no remedy?"

Again Evarts met the searching interrogation without flinching.

"No," he answered; "whatever fraud there is must be discovered and protested against before the Board of Canvassers makes its returns—"

"But suppose the members of the board were themselves the conspirators?"

"It makes no difference under the law."

"If this be sound doctrine," observed the judge, "it is the only instance in the world where fraud becomes enshrined and sanctified behind the certificate of its authors. It is elementary knowledge that fraud vitiates all proceedings, even the most solemn—that no form of words, no amount of ceremony, and no solemnity of procedure can shield it from exposure."

Again Evarts made no answer, but stood his ground defiantly, the audience watching him, spellbound and almost without breathing.

"Suppose the canvassers were coerced by *force*," continued the relentless questioner; "suppose men put pistols at their heads and threatened to blow out their brains if they did not perjure themselves, would there be no remedy?"

Again No! and No! again. Neither mistake nor fraud nor force justified Congress in reversing the action of the State canvassers, and the certificate issued on their return must stand. Neither the Constitution nor the laws authorized Congress to go behind the returns,

and the court had no power except that which Congress possessed.

Had he faltered in his answer to those searching questions, had even the expression of a doubt crossed his face, it is not impossible that Evarts would have lost his cause. But to his professional mind the law was the law. It was not justice; it was not expediency; it was not necessarily logical or even defensible, but it was unalterable, and with unquivering eyelids he outfaced his questioner and carried the day.

On the 5th of February the commissioners retired to deliberate, and on the 8th they determined by a vote of eight to seven not to go behind the returns, every Republican siding with the majority and every Democrat opposing—a strictly partisan vote. "I would rather lose by a unanimous decision than win on such a showing," was the comment of a disheartened Republican patriot, and his words voiced the thought of all who had looked to the court for an authoritative utterance free of political taint.

To the legal fraternity that preliminary decision was deeply significant, but patriotic optimists still clung to the belief that the court would yet assert its independence, and when testimony was admitted to establish the

disqualification of the office-holding Republican elector, the spirits of the optimists rose accordingly. The evidence, however, demonstrated that the accused official had resigned the Federal position which was supposed to bar him from acting as an elector, and that technically he was within the law. On the 8th of February the commissioners again retired for deliberation, and when they returned on the 9th and awarded Florida to Hayes by the same partisan vote of eight Republicans against seven Democrats, the supporters of Tilden lost heart and sensitive Republicans hung their heads.

And yet, had they but known it, a great opportunity still lay before the Democrats, and those in the Republican secrets were yet to face the worst quarter-hour of their lives, for some of them had taken desperate chances in the interests of their party, and they faced the open doors of a prison when the opposing certificates from Louisiana reached the Presiding-Justice, Clifford.

It was on the morning of February 13th that this crisis was reached, and the court was again crowded to its utmost capacity. All the commissioners were present and all the counsel who had attended the previous sessions, except

O'Conor whose place was occupied by ex-Judge Campbell. There was, therefore, no lack of astute advisers for the Democracy. They were the flower of the bar—trained observers whose professional duties had taught them to scrutinize every detail in a case and take nothing for granted, while on the bench were seven Democratic jurists, equally well equipped and vigilant. With such an array of legal experts watching the interests of their clients it seemed impossible that deception should be successfully practised or fraud go undetected, and yet the impossible happened.

The proceedings opened as usual with the reception of the conflicting certificates from the Senate-chamber—five documents in all—and while these important papers were being perfunctorily examined and initialled by the presiding justice, the journalists in the gallery idly watched the scene, the lawyers whispered together, and prepared for the coming contests, the general public waited, bored and inattentive, and some of the Republican managers sat quaking with fear.

Judge Clifford finally laid aside his pen, and it was ordered that the various exhibits which he had been marking be printed and copies

furnished for the convenience of the counsel and commissioners. Had a single objection to this routine been interposed; had prudence, habit, or even curiosity impelled any of the Democratic counsel to scrutinize the original documents, or had enterprise prompted any journalist to examine and compare them, a sensational exposure would have been inevitable, for one of the Republican certificates was clumsily, even obviously, forged.[1]

[1] Under the Constitution three copies of the certificate of the Louisiana vote were necessary, one of which had to be forwarded to the President of the Senate by mail, another delivered to him by hand, and the third deposited with the United States District Judge—all of which had to be accomplished within a certain number of days. When the Republican messenger—one T. C. Anderson—arrived in Washington and delivered the package containing one of those three certificates to Mr. Ferry, the President of the Senate, that gentleman called his attention to an irregularity in the form of the indorsement on the envelope and suggested that he consider its legal effect. Anderson therefore retained the package and secretly opened it to ascertain if the error had been repeated in the certificate itself. To his consternation he discovered far more vital defects in the document, and flying back to New Orleans, consulted with the party leaders, who agreed that the instrument must be redrawn, and the electors were hastily resummoned. Then, to the managers' horror, it was discovered that two of the necessary officials were absent and could not possibly be reached within the time limited by law for the delivery of the paper in Washington. "Heroic" measures were therefore deemed essential, and after all the available signatures had been obtained the others were forged and the doctored certificate, which, of course, was obviously different from the one previously fowarded by mail, was rushed

Had this been discovered, it is not impossible that one or more of the Republican commissioners, who were suspected of wavering in their party allegiance, would have voted for a thorough investigation, and an entirely different result might have been effected. From a strictly legal point of view the forgery was not necessarily fatal to the validity of the certificates, for they had been executed in triplicate and only one of the three was tainted with fraud, but the storm of popular indignation which would undoubtedly have followed the discovery of this fact might well have severed one of the Commissioners from his party allegiance. But however that might have been, neither suspicion nor inspiration put the Democratic champions on their guard, and the opportunity passed unheeded, never to return.

Wholly unconscious of this glaring defect in their enemies' armor, the Democratic counsel proceeded to give battle on substantially the same lines which had brought them to defeat in the Florida case. There was, however, some

back to Washington just in the nick of time. All these facts were subsequently unearthed, but those who actually committed the forgeries were never detected.—*H. R. R. No.* 140, 45*th Cong., 3d Session, pp.* 50–63 *and* 89–91.

reason to hope that the court might yet reverse itself, for popular denunciation of the partisan vote had not been confined to the supporters of Tilden, and the effect of public opinion upon political judges could not be disregarded. Moreover, the Louisiana case was particularly strong upon the merits, for it was well known that the heavy Democratic majorities had forced the Board of Canvassers to reject votes—not sparingly, as had been sufficient in Florida, but by thousands upon thousands—and it was believed that some of the eight Republicans could yet be induced to vote for an examination into the facts.

With these incentives, therefore, Carpenter and Trumbull began the attack, and for half a day they battled manfully against the adverse precedent which had been established in the Florida case, demanding that the court overrule itself and cease to shield injustice under technicalities. Appealing as their arguments were, the answers of Stoughton and Shellabarger, the Republican counsel, were well calculated to hold the majority of the court together, for they showed that an examination into the facts would entail an almost interminable proceeding, precluding any possibility of a decision until

long after Grant's term had expired. In the mean time there would be no President or Vice-President, and the result of such an unsettled condition of affairs upon the business of the country would be wellnigh disastrous. This prospect was sufficiently alarming to sustain the wavering majority, and after Evarts and Judge Campbell had fought each other for another day with legal citations, history, philosophy, and all the other weapons of debate, argument was again exhausted, and the court once more retired for deliberation. The fight, however, was immediately continued in the consulting-room. Motion after motion was made by the Democratic commissioners for a favorable decision on their contentions, but without avail. No matter in what form their propositions were submitted, the eight Republicans voted them down and the seven Democrats dissented. Finally it was proposed to reject all the returns and throw out the vote of Louisiana altogether —a proceeding fully justified by the situation, and for which there was precedent—but this was likewise defeated by the same vote of eight to seven. Then Commissioner Morton, who is supposed to have been warned that there was something wrong with the Republican certificate

marked No. 3, moved that the votes reported in certificate No. 1—the document which Ferry had received by mail—be counted for Hayes, and his resolution was carried by the monotonous majority of one.

With this decision the case practically ended. On February 22d Hoadley and Merrick led a forlorn hope in an attack upon the returns from Oregon, but as the Republicans were strongly intrenched behind the precedents already established, and as they had concededly carried that State, Evarts and Matthews had no difficulty in repulsing the enemy, and after one day's fighting the dominant majority in the Commission decreed Oregon's three votes to Hayes against the futile protest of their seven associates.

Finally the case of South Carolina was called, but the Democratic electors did not have a majority on the face of the returns from that State, and all public interest in the contest had now evaporated. With the audience-chamber practically deserted, and before a listless and inattentive bench, the Republican counsel waived their right to a hearing, and submitted their papers to the court without argument. Blair and Black, however, made a last stand for the

Democrats, the latter attacking the partisan commissioners with scathing scorn and unbridled fury, his closing words referring to the rumor that a secret agreement had been effected with the incoming administration to end the policy of Reconstruction.

"They offer us everything now!" he exclaimed, with bitterness. "They denounce negro supremacy and carpet-bag thieves. Their pet policy for the South is to be abandoned. They offer us everything but one; but on that subject their lips are closely sealed. They refuse to say that they will not cheat us hereafter in the elections."

With the thunder of these denunciations reverberating in their ears the Republican eight awarded South Carolina to Hayes on February 27th, and three days later the great Electoral Commission ingloriously dispersed.

It was not in vain, however, that the battle had been fought, for of the sectional contagion which contaminated the court-room and affected the judges, the policy of Reconstruction died. As Black had prophesied, within two years the administration, recognizing that another such victory would destroy the party, abandoned the State officials in South Carolina and Louisiana

who had been declared elected by the same boards which, with less reason, had awarded the electoral votes to Hayes; carpet-bag government became only an evil memory in the South, and ten years later an act was passed regulating the counting of disputed electoral votes which diminished if it did not eliminate one of the gravest constitutional evils imperilling the safety of the republic.

VIII

PEOPLE *vs.* SPIES *et al.*: THE CHICAGO ANARCHISTS' CASE

THE atmosphere of the Criminal Court of Cook County was ominously business-like on the morning of June 21, 1886. Save for the group of women gathered about the judge behind the judicial desk, no one in the huge, barn-like court-room seemed to be in attendance from mere idle curiosity, and every one, from the judge upon the bench to the bailiffs guarding the doors, looked unmistakably grave. Far larger audiences had frequently assembled in that unpretentious chamber, for the long galleries at either end were closed to the public, and comparatively few of the spectators on the floor were standing; but unusual as this condition of affairs was for the opening of an important murder trial, it did not apparently satisfy the presiding official, whose severe glance swept disapprovingly over the scene. "Persons who can-

not find seats must instantly leave the room," he commanded, sharply. "The bailiffs will immediately enforce this rule."

There was no mistaking the determination of the speaker. Slowly, but without resistance, the unseated spectators were herded from the court and the doors closed behind them. Then the judge turned to the prosecutor's table at the right of the low platform supporting the bench and nodded to an intellectual-looking man, who seemed to be awaiting the signal, for he immediately rose and broke the intense silence by observing that the State was ready in No. 1195.

This conventional announcement, uttered in a quiet, conversational tone, marked the opening of a cause wholly unprecedented in the United States, and in many respects unparalleled in the history of the world, but those who anticipated something more dramatic were to have their expectations realized in a most surprising manner before many minutes had elapsed.

For nearly seven weeks Chicago had been feverishly awaiting judicial action on an outrage which had at first horrified, then frightened, and finally exasperated the community to a point which threatened the due administration of justice. On the night of May 4, 1886, a mass-

meeting had been held near Haymarket Square under the auspices of certain anarchist organizations to protest against the action of the police in repressing disorder during a wide-spread strike to enforce the eight-hour labor day. While this meeting was in progress a company of policemen had appeared under the command of Inspector Bonfield, and Captain Ward, one of the subordinate officers, ordered the crowd to disperse. The words had scarcely left his lips when some one hurled a dynamite bomb among the men behind him, killing seven of them and injuring sixty others, and in the excitement and confusion that followed the assassin had easily made his escape.

It did not take long for the citizens of Chicago to realize the menacing nature of this attack upon law and order, but before they fairly recovered from the shock the authorities began an investigation which for thoroughness and intelligence has never been surpassed in the annals of the American police. Within a week almost every prominent anarchist in the city was under arrest, and the newspapers, teeming with stories of their plots for wholesale murder, roused the public to the point of fury. Execration of such outrages was confined to no particular class of

citizens. All sorts and conditions of men—wage-earners and capitalists alike throughout the country—vied with each other in demanding the prompt suppression of anarchy, and although the first burst of popular rage had undoubtedly spent itself before the accused men were arraigned at the bar, the feeling that followed was perhaps even more dangerous to their safety. The wild denunciations of existing social conditions which had been openly uttered in the city for years, only to be disregarded or laughed at, had suddenly become infamous, and there was no mistaking the popular temper in regard to them. If free speech had been abused, and its abuse encouraged by the indifference of a good-natured people, it was high time that those who had overstepped their privileges learned that they had done so at their peril, and public opinion demanded that the lesson be so taught that it would never be forgotten.

This was the spirit animating the crowd which hung upon the prosecutor's opening words on the longest day in the year, 1886, and a more thoroughly informed audience never assembled in a court of law. Not only was every detail of the police investigations familiar to all newspaper readers, but, through the publication of

their photographs and records, all the principal actors in the impending drama had long been public characters. Probably every man and woman in the court-room recognized the severe, distinguished-looking judge as the Hon. Joseph E. Gary, who had fought his way from the carpenter's to the judicial bench, and whose reputation as jurist and martinet insured dignity and effectiveness at all legal proceedings over which he presided. Similar details concerning other officials and parties in interest were matters of common knowledge. State's Attorney Julius S. Grinnell, the intellectual-looking man with eye-glasses, who had answered the judge's initial nod, was almost a national character, for his duties as public prosecutor had made him one of the most conspicuous officials in the United States, and the young men gathered about him in close consultation—Francis W. Walker and Edmund Furthman, of his official staff, and George C. Ingham, specially retained to supplement their efforts—had already acquired considerable local celebrity. Perfect confidence was reposed in this legal quartet, for Mr. Grinnell, fully realizing that Chicago's reputation for law and order was at stake, and that the opportunity of his life lay before him, had

prepared his case in almost record time, and had selected as his subordinates men well fitted for the work at hand.

Their opponents were not so well known, for the press had devoted little space to them, and the state of public opinion in regard to the case made the task of its defence particularly ungrateful. Of the four lawyers representing the accused, two had had very little experience in the courts, for Sigmund Zeisler, though an able man, was a foreigner only recently admitted to the Illinois bar, and his partner, Moses Salomon, was a beardless youth of no recognized standing. William P. Black and William A. Foster, the senior counsel, were, however, experienced advocates, the former being a familiar figure in the local courts, where he had acquired a reputation for pugnacity which boded ill for that swift and unobstructed administration of the law then generally regarded as essential to the public safety. Indeed, it was with no little relief that the over-anxious champions of law and order noted his absence when the prisoners were brought into court, and the rumor swiftly spread that he had abandoned the case. Black, however, was planning a very different and far more startling move.

Bitter as was the public feeling against the closely guarded prisoners who sat at the left of their counsels' table, it was generally understood that none of them had personally committed the crime with which they stood charged, and with the exception of the wild-eyed young degenerate Louis Lingg, there was nothing even suggesting a criminal in their appearance. August Spies, the editor of the anarchist paper *Die Arbeiter Zeitung*, looked like a German student, his little mustache with waxed ends giving him quite a military air. His associate, Michael Schwab, with his long beard and spectacles and intellectual face, might easily have passed for a German professor. Samuel Fielden, the English agitator and anarchist, likewise suggested the student and scholar, and his strong, intelligent face bespoke a man of unusual ability. Adolph Fischer, George Engel, and Oscar W. Neebe, the other defendants, were weak rather than vicious looking, and a glance at their faces was sufficient to suggest how dangerous a little knowledge might prove to their minds. All of these men were foreigners, and some of them did not even speak the English language, but there was absolutely no prejudice against them on this account. Indeed, the public indigna-

tion, as far as it was directed against any particular individual, centred upon the only American accused of the crime, and the fact that he was not in court was a bitter disappointment to the police, for of all the anarchist leaders he was the only one who had even attempted to escape.

It was not because the authorities had not sought him diligently that Albert R. Parsons was still at large. Never had a fugitive from justice been more systematically hunted, but though the police force of the entire world had been upon his track, they had not run him down. For a time his disappearance was interpreted as a confession of guilt, and it would have surprised no one if he had been indicted as a principal, but the Grand Jury merely named him as an accessory, charged, like the others, with having instigated and encouraged the crime. Meanwhile the search for him continued unabated, for as long as he remained at liberty the record of the police was seriously marred. The day of trial had arrived, however, without the slightest clue to his hiding-place, and not the least damaging circumstance that confronted the seven prisoners on trial was the incriminating flight of the leader who had addressed their

meeting only a few minutes before the explosion of the fatal bomb.

Such was the situation when Mr. Grinnell moved his case to trial, but the preliminary examination of talesmen for the jury had scarcely begun before the proceedings were interrupted by the entrance of two men, one of whom was readily identified as Captain Black the missing counsel for the defence. The other was not immediately recognized, and he had almost reached the bench before the prosecutor sprang excitedly to his feet.

"I see Albert R. Parsons, indicted for murder, in this court, and demand his instant arrest!" he shouted.

Captain Black halted, turning savagely upon the speaker.

"This man is in my charge, and such a demand is not only theatrical clap-trap, but an insult to me!" he retorted, indignantly.

Captain Schaack, Inspector Bonfield, and a dozen other detectives and police officials were instantly upon their feet, but the audience, scarcely believing its eyes or ears, sat in dumb amazement as the two lawyers angrily faced each other. Before another word could be uttered, however, Parsons himself set all doubts at rest.

"I present myself for trial with my comrades, Your Honor," he observed, with perfect calmness.

If Judge Gary did not entirely retain his composure, he at least gave no outward evidence of astonishment.

"You will take a seat with the prisoners, Mr. Parsons," he directed, as though nothing unusual had occurred, and immediately instructed the counsel to prepare the necessary papers, allowing the new defendant to enter a plea and stand trial with the others. An eighth chair was thereupon added to the prisoners' row, and Parsons was soon shaking hands and conversing with his co-defendants, while his lawyers complied with the legal formalities, and in a few minutes the great case was again under way.

Whatever may be thought of the strategic expediency of Parsons's move—and there is strong evidence that it was positively disapproved by at least one of his counsel—there can be no question that it displayed courage and unselfishness of a high order. Had he continued in hiding until a jury had been empanelled, he would have secured the immense advantage of a separate trial after the public clamor had been satisfied or diminished, without depriving the other defendants of the benefit of his presence or

his testimony. Mr. Foster urged this course, pointing out the danger of a trial with seven other persons, where all sorts of testimony would be admitted, and the innocent be likely to suffer with the guilty, but his advice was disregarded. Parsons deliberately chose to share the hazard of his friends' fortunes, and in so choosing it cannot be denied that he displayed a fortitude and devotion well worthy of respect.

Such, however, was not the opinion of Chicago, where his return was interpreted as further evidence of his notorious contempt and defiance of the law, and the fact that he was an American deepened the feeling against him. But if, as has been claimed, he was unaware that the public indifference to anarchy had given place to detestation of its teachings, the examination of the citizens summoned for jury duty must have completely disillusioned him. Certainly no court record in the United States reveals a deeper or more wide-spread public prejudice than that disclosed by the sworn testimony of the talesmen in this case. Hour after hour passed without the discovery of even one candidate fitted for dispassionate service, and panel after panel of prospective jurymen was exhausted with like result. Days passed without

much better success, and the days stretched into weeks. Everybody seemed to have an opinion —and a decided opinion, too—that the men on trial were guilty, and the few who did not hold such positive views were so convinced that something radical ought to be done to discourage lawlessness that they could not trust themselves to judge the case upon its merits. Finally the defence exhausted all its peremptory challenges, and after twenty-two days of unremitting labor, *during which no less than 981 persons were examined*, twelve men were sworn into the jury-box who, while not ideal jurors, were perhaps as open-minded as could be expected under the existing condition of public sentiment. No enviable fate awaited those twelve good men and true. From the moment of their acceptance as jurors they were virtual prisoners, confined when out of court in an adjoining hotel, guarded by bailiffs night and day, and cut off from all communication with the outer world.

It was July 15th before Mr. Grinnell rose to make his opening address, which, despite the minute information furnished by the press, was a revelation to his audience, and not until they had listened to his bitter, forceful arraignment did the counsel for the defence fully realize the

desperate fight that lay before them. Amid breathless silence the prosecutor claimed that he would show that the defendants were not indirectly but directly responsible for the crime, having deliberately planned it and other similar outrages, and that he would produce the man who had done the deed.

The sensation created by this announcement was not confined to the outsiders, for in the excitement of the moment Mr. Grinnell had promised more proof than he had in his possession, and under different circumstances his over-zealousness in this and other respects might have seriously damaged his case. The details which he gave, however, disposed of the theory that the defendants were to be prosecuted because of their opinions, and that no direct proof of their connection with the crime could be produced—a story which was already beginning to win sympathy for their cause.

At the conclusion of this startling address the first witness was called to the stand, and from that moment the trial proceeded rapidly. Without difficulty it was proved that all the defendants were members of an anarchist society known as the International Working Men's Association—some affiliated with one group and

some with another. Fischer and Engel belonged to what was known as the Northwest Side group; Schwab, Neebe, and Lingg to the North Side; and Spies, Fielden, and Parsons to the so-called American group. Each of these groups or chapters had a sub-organization of a military character known as the Armed Section, in which all members having weapons were enrolled.

The conditions of the strike which began on May 1st were then developed by the testimony of the witnesses, and it was soon shown that Spies had been present during a riot at the McCormick factory which had occurred on May 3d, resulting in a collision with the police and the death of several persons. A few hours after this event, Spies had written and caused to be distributed an inflammatory circular, headed "Revenge!" calling upon the people to avenge the alleged murder of the strikers who had fallen in the fight with the police. No response of any kind followed the distribution of this handbill, which, though declamatory and denunciatory, called for no particular action. It was then proved that two circulars had been issued announcing a mass-meeting for the night of May 4th, one urging working-men to come armed, and the other omitting that direction, the former, prepared

by Fischer and Engel, being suppressed in favor of the latter at the dictation of Spies. Two witnesses who had turned State's evidence, and were themselves under indictment for murder, were then called, and revealed a madhouse plan of action.

According to these witnesses, a meeting of the Armed Sections had been held on May 3d, at which it had been agreed that when the word "Ruhe" appeared in Spies's paper, *Die Arbeiter Zeitung*, the members should assemble, provided with dynamite bombs, and distribute themselves so as to cover the various police stations. "A committee of observation" was then to act with those men, and upon any report of collisions with the police the conspirators were to hurl their bombs into the station-houses, and shoot down all who attempted to escape. This murderous plan, according to the eye-witnesses, originated with Engel, and both he and Fischer were active in arranging the details.

There was much to impeach the story told by the informers, one of whom had apparently made suspicious overtures to the defence. Under skilful cross-examination it was shown that he had confessed and retracted and reconfessed, and very little reliance would have been placed

upon his testimony had it not been supported by other proofs. It was, however, most significantly corroborated. The signal "Ruhe" *had* been anonymously sent to *Die Arbeiter* for publication, and the paper containing it was admitted in evidence, together with Spies's written direction to his compositor to insert it in the column known as "The Post Box."

This was the first link in the remarkable chain of exhibits which was to make this case unique in the annals of criminal law.

Another informer then took the stand, and testified that he had aided the defendant Lingg to manufacture dynamite bombs for the use of the Armed Sections according to the plan previously agreed upon, and that early on the evening of May 4th he and Lingg had carried a satchel full of the deadly missiles to a saloon frequented by their group, depositing it in the basement hallway of this resort, where any one who chose to do so could enter and help himself. Neither the appearance of the man who told this tale, nor his record, nor his motives entitled him to credence, but again the exhibits spoke louder than any words, and corroborated him beyond hope of contradiction. These silent witnesses were the materials and apparatus for

making bombs discovered in Lingg's rooms, the fragments of the exploded bomb, which conclusively proved that it was the sort which Lingg had manufactured, the bombs which the witness confessed that he and Lingg had secreted under a sidewalk where they were located by the police, and a fuse and fulminating cap found in the pocket of Fischer's coat at the time of his arrest.

All the proof up to this point, however, involved only Fischer, Engel, Lingg, and Neebe, and there was very little to connect the last-named with the case. Beyond the fact that he was a small stockholder in *Die Arbeiter*, of whose property he assumed charge after the arrest of its editors, and that he had distributed some of the "Revenge" circulars, there was no evidence against him, and nothing further developed as the trial progressed.

Then followed the history of the Haymarket mass-meeting at which Spies, Parsons, and Fielden spoke. All accounts agreed that the meeting was orderly, and the speeches, if intended to inflame the audience, were ill adapted to that end and signally failed of their purpose. Even Fielden's address, which apparently moved the police to interfere, was less violent than the

average stump-speaker's harangue, and the crowd did not seem to have been excited by it. Finally a witness named Gilmer was produced, who swore that he had seen something that might have been a bomb pass between Spies, Schwab, and a man named Schnaubelt, and that later, when Captain Ward ordered the crowd to disperse, he saw this man draw a bomb from his pocket and hurl it at the police after Spies had lit the fuse.

Formidable as this testimony appeared to be, it was badly shattered under cross-examination. The witness, it appeared, had kept his information to himself for several days after the event, during which time the man Schnaubelt was twice arrested and discharged, and his whole story and his manner of telling it indicated that he was a notoriety-seeker who had concocted the tale in order to attract public attention and gratify his pitiful vanity, if not for mercenary motives. Dozens of witnesses subsequently took the stand and swore that he was a notorious liar who lived by his wits, and the contrary statements of those who were called to support his reputation for veracity were utterly unconvincing. There was some corroboration of this witness in the testimony of a man named Thompson, and the

disappearance of Schnaubelt and his relationship to Schwab were suspicious circumstances, but the proof fell far short of the prosecutor's claim that he would produce the actual assassin, whose identity has not been satisfactorily established to this day.

Some policemen then attempted to show that Fielden had fired upon them from behind the cart which served as the speaker's platform after the bomb had been thrown, but their assertions partially disproved themselves, and there was an utter absence of convincing confirmation. In fact, none of the oral testimony strongly inculpated either Spies, Schwab, Fielden, or Parsons, but before long telltale exhibits which could not be impeached began to pile up against them.

For some years Spies and Schwab had been conducting *Die Arbeiter Zeitung*, and Parsons had been editing *The Alarm*, and very close relations existed between these two journals. In the offices of the first-named the police found dynamite and dynamite bombs, which were produced and exhibited to the jury. Then red flags and banners inscribed with incendiary mottoes seized in the same office were carried into court, and from the editorial library came

Most's *Science of Revolutionary Warfare.* The admission of this last exhibit was bitterly opposed by the defence, but upon proof that the book had been advertised for sale by the editors, and that it had been peddled at anarchist fairs attended by some of the defendants, it was received and its diabolical contents read in full to the jury. This, however, was not the most questionable ruling at the trial, for the court permitted the prosecution to place in evidence several bombs which had been discovered by the police weeks after the crime and miles away from the scene of action, and to exhibit their destructive qualities despite the fact that not one of them was clearly traced into the possession of the defendants. There has never been any satisfactory defence of those extremely dubious rulings, but it is very doubtful if they affected the result, for the most damaging evidence of the whole trial was furnished by the written words of the prisoners themselves.

Copy after copy of the *Arbeiter* and the *Alarm* was produced, and their articles and editorials, as read to the jury, must have convinced any intelligent body of men of the purpose for which they were written. Certainly nothing could have been more injurious to Spies, Schwab, and

Parsons than their editorial utterances, which included every possible incitement to the use of dynamite and the commission of wholesale murder. In the issue of November 27, 1885, the editors of the *Arbeiter* made the significant announcement that "*Steel and iron are not on hand, but tin two or three inches in diameter. The price is cheap*"—a virtual advertisement of material for bombs.

On April 8th the same paper observed: "*A number of strikers at Quincy yesterday fired upon their bosses and not at the scabs. This is recommended most emphatically for imitation.*"

On June 27th of the same year Spies wrote a signed essay in the *Alarm*, explaining in detail the preparation of dynamite bombs, and closed it with these words: "*It is necessary for the revolutionist to experiment for himself. Especially should he practise the knack of throwing bombs.*"

Advice of this nature appeared in almost every issue of the *Arbeiter* up to the time of the outrage, and in the copy of March 15, 1886, the editors answered a suggestive communication signed "Seven Lovers of Peace" as follows: "*A dynamite cartridge explodes not through mere concussion when thrown. A concussion-primer is necessary.*"

Indefatigable as Spies and Schwab were in the dissemination of such information and advice Parsons was even more active. In the columns of the *Alarm* on February 21, 1885, murder was openly advocated as follows: "*Dynamite! Of all good stuff this is the stuff. Stuff several pounds of this sublime stuff into an inch pipe (gas or water), plug up both ends, insert a cap with a fuse attached, place this in the immediate vicinity of a lot of rich loafers who live by the sweat of other men's brows, and light the fuse. A most cheerful and gratifying result will follow.*"

Again, in another issue, this sentiment appeared: "*Nothing but the uprising of the people and a bursting open of the stores . . . and a free application of dynamite to every one who opposes will relieve the world. . . . Seeing the amount of needless suffering about us, we say a vigorous use of dynamite is both human and economical.*"

It is not probable that Parsons himself wrote either of those paragraphs, but day after day he had sanctioned this policy in varying forms, and on April 24, 1886, only a short time before the Haymarket meeting, the paper he edited emphasized it in this fashion: "*Workingmen to Arms! War to the palace—peace to the cottage, and death to luxurious idleness. . . . One*

pound of dynamite is better than a bushel of bullets. Make your demand for eight hours with weapons in your hands to meet the capitalistic blood-hounds, police and militia, in the proper manner."

Not only did these and similar exhortations reveal the editors' intentions, but their printed and spoken words proved that their only remedy for grievances was terrorism through wholesale murder and violence. With the eight-hour strike or the ballot or any similar effort on the part of working-men to better their condition they displayed little or no sympathy. *In fact, they frankly declared their disbelief in such methods*, and it was evident that their only interest in the labor movement was the chance it afforded for collisions with the authorities and the carrying out of their desperate programme.

This sort of evidence accumulated day after day, until the court-room was fairly littered with papers, and when the prosecution closed its case on July 31st, the preaching if not the practice of the defendants had been demonstrated beyond any chance of contradiction.

Confronted by this overwhelming proof, the counsel for the defence set valiantly to work

directing their efforts to proving that neither Fischer, Engel, Schwab, Lingg, nor Neebe was at or near the Haymarket when the crime was committed; that the meeting had been orderly, and that none of the defendants had resisted the police. In all of this they were fairly successful, but the proofs did not meet the issues, for the presence or absence of the defendants was not material in view of the conspiracy charged. Moreover, in its issue of March 16, 1885, the *Arbeiter* gave specific advice on this very point to those contemplating a "revolutionary deed." "*Whoever is willing to execute a deed,*" wrote the editors, "*has to put the question to himself whether he is able or not to carry out the action by himself. . . . If not, let him look for just as many fellows as he must have. Not one more nor less; with these let him unite himself to a fighting group. . . . Has the deed been completed? Then the group of action dissolves at once . . . according to an understanding which must be had beforehand, leaves the place of action, and scatters in all directions.*"

Finally, Spies, Fielden, Schwab, and Parsons led a forlorn hope by taking the stand and endeavoring to overcome the unfavorable impression which their writings and speeches had created. But though they stoutly asserted

their innocence of any specific plot against the police, and denied all knowledge of the perpetrator of the crime, they could not but admit that they had advocated similar deeds for years, and the fact that they disapproved and deprecated the particular violence of the moment was no answer to the charge that they had openly encouraged murderous defiance of the law, and zealously endeavored to commit other less intelligent men to the execution of their mad designs.

For seven days the fight continued on these lines, but on August 11th, both sides having rested, Assistant State's-Attorney Walker began to sum up for the prosecution. During the next eight days the lawyers for the defence and the State alternated in addressing the jury, but here again the exhibits spoke louder than any words, for on the table before which Mr. Ingham stood during his summing-up lay bombs of all descriptions, fulminating caps, shells, melting-ladles, and other tools of the dynamiter's trade, and in plain sight of the jury were the red banners and flags of the terrorists blazing with mottoes urging defiance of the law.

Even with such odds against them the counsel for the defence might still have made some im-

pression upon the jury had they been permitted to follow the tactics adopted by Mr. Foster, who, without attempting any defence of anarchy made a dispassionate, logical, and lawyerlike argument, admitting the criminal folly of his clients' utterances, but insisting that there was no proof that any word of theirs, written or spoken, had ever reached the bomb-thrower's ears, or that his monstrous deed had in any way been instigated by the defendants. The jury had no right to suppose this was so. The mere fact that the defendants advocated violence was not enough. For years freedom of speech had been flagrantly abused without remonstrance, the license of the press had been permitted to menace true liberty with impunity, and there were other circumstances inculpating the public and inviting mitigation of severity towards the accused.

The prisoners themselves, however, some of whom seemed not unanxious to pose as martyrs for the "cause," hotly resented Mr. Foster's plea, which resulted in his withdrawal from the case, and they practically dictated the policy of their other counsel. But the public was in no mood for a defence of terrorism, and although Messrs. Zeisler and Black made admirable pleas

along lines acceptable to their clients, the audience was visibly unsympathetic, and when Mr. Grinnell replied, declaring that no one in America was afraid of anarchists, the galleries, which had been unwisely opened to spectators, thundered with ominous applause. This outbreak was the only disturbance which marred the dignity of the trial.

The judge then charged the jury, reciting, among many other points, the Illinois statutes defining an accessory *as one who stands by and aids in the commission of a crime, or who, not being present, advises, encourages, aids, or abets in its commission, and declaring that such accessories be considered principals and punished accordingly.*

It was late in the afternoon of August 19th—almost two months after the opening of the trial—when the jury retired, and a few hours later it was rumored that they had reached an agreement, and would render a sealed verdict the next morning.

Under the Illinois law the jurors were required not only to declare the guilt or innocence of the accused, but to prescribe the penalty in case of conviction. It was therefore in their power to acquit or to demand the death penalty

or to punish the defendants with imprisonment for any term of years not less than fourteen. In his closing address Mr. Grinnell had not invoked the extremity of the law against Neebe, but he had declared all the others deserving of death, and the speedy agreement of the jurors was regarded as highly significant. The moment they resumed their places in front of the bench the foreman rose and handed a sealed paper to the clerk, who opened it and read as follows: "We, the jury, find the defendants, August Spies, Michael Schwab, Samuel Fielden, Albert R. Parsons, Adolph Fischer, George Engel, and Louis Lingg, guilty of murder in the manner and form charged in the indictment, and fix the penalty at death. We find the defendant Oscar W. Neebe guilty of murder in the manner and form charged in the indictment, and fix the penalty at imprisonment for fifteen years."

No demonstration on the part of the audience greeted this announcement, but a roar of cheers from the crowd gathered before the court-house floated in through the windows, and in the hush that followed the jury was solemnly polled, each juror signifying his individual concurrence in the verdict. Thus ended the first capital case

in the United States involving abuse of the liberty of the press.

The fight for the prisoners' lives did not, however, cease with the verdict. At the October term of the court, on a motion for a new trial, all of the condemned made long and some of them very able speeches, demonstrating that they were right-hearted though wrong-headed men, and a year later, after an elaborate argument, in which Leonard Swett, Lincoln's old associate, appeared for the defence, the Supreme Court affirmed the verdict, although one of the judges declared, however, that the trial had not been free of legal error.

Lingg then committed suicide; Spies, Parsons, Fischer, and Engel were executed; the sentences of Schwab and Fielden were commuted to imprisonment for life, and they, together with Neebe, were pardoned, after serving seven years, by Governor Altgeld, whose action, bitterly resented at the time, has come to be regarded as a legitimate exercise of executive discretion.

THE END

MARRIED AT FORT—

Slave Here 2 Years

Dred Scott, who was purchased for $500, came to Fort Snelling in 1836 as a slave of Dr. John Emerson, an Army surgeon from Missouri.

The doctor apparently had some concern for his slave. When the fort's quartermaster, Lt. McPhail, refused to give a stove to Scott because all the officers hadn't yet received theirs, the doctor blew up. Words followed.

The quartermaster punched the doctor in the eye. The doctor dashed off for his dueling pistols and only the great need for the only surgeon north of Prairie du Chien, Wis., prevented a duel.

The year Scott arrived at Fort Snelling he was married to a mulatto slave, Harriet Robinson, originally owned by Maj. Lawrence Taliaferro, Indian agent. The major sold the girl to Dr. Emerson and then, as justice of the peace, married her to Scott.

Historians say Scott and other Negro slaves were treated kindly by the Indians, who called them "black Frenchmen."

Scott and his wife left Fort Snelling in 1838 after Dr. Emerson was transferred.

DRED SCOTT

Dred Scott Decisio

100-Years-Old

NEW YORK — (AP) — The nine justices came into court slowly, the younger men in the rear retarding their steps to conform with the shaky tread of their aged chief.

They settled into their seats with a dry whispering of black robes. The crier intoned his formal words; then Chief Justice Roger B. Taney unfolded his thin, lank form and began to read the Dred Scott decision.

He read for 90 minutes, while his high, thin voice faded to inaudibility. While he read, the United States slid past the point of no return, toward Civil War. In the framing of the decision he pronounced, a president-elect had meddled. There had been unorthodox proceedings in the court. The judgment dealt the court's prestige a blow from which it would not recover for a decade.

At dead center of the malestrom of events was an illiterate, infirm Negro slave. The decision which was to settle everything settled nothing. . . .

The slave was Dred Scott, born in Virginia about 1795; in his 60s on this March 6, 1857, when the deciding whether he was slave or free man tore a nation apart. He had been named Sam. Just Sam, nothing more. The where, how and why of Sam's transmutation into Dred Scott is misted in legend. Most of the stories sound apocryphal. In any case, Sam made his impact on history as Dred Scott, and it is better so. There is a rolling organ tone in the words, Dred Scott decision. You could not so imbue the Sam decision.

ISSUE SIMPLE

The primary issue in Dred Scott's case was simple: Had four years' residence in free territory made this slave a free man? At climax, it involved far more — status of all Negroes under the Constitution, the power of Congress to bar slavery from United States territories, the constitutionality of the Missouri compromise and, the dominant question of the time—should expansion of slavery be permitted? In the opinion of most historians, the Dred Scott decision was the event that made Civil War inevitable.

How did this Negro slave, past his best working days and unwanted by the people who owned him, become, in the sense, the focal point of a nation's destiny?

The best way to tell so tangled a story is to begin at the beginning.

The critical action was Scott's purchase in 1832 by Dr. John Emerson, a surgeon in the United States Army. Emerson's duties took him from slave country, Missouri, into the free lands of Il-

linois and the Minnesota and Wisconsin territories. Scott, his body servant, lived with him in free territory for four years, was married in Minnesota and his first child was born there.

Dr. Emerson died in 1843, leaving his estate — including the Scott family — to his wife, in trust for a daughter. Mrs. Emerson didn't want the slaves and, unable to dispose of them under the terms of the trust, gave them into custody of friends and returned, to Massachusetts. Later, she married an abolitionist, Dr. Calvin G. Chaffee, and you can imagine the embarrassment the Scott family was to him.

SUIT FILED

The precise progress of the Scott case to a national issue is not clear. Scott must have had pretty strong backing from the time the suit for his freedom was filed in St. Louis in 1846. But there does not seem to have been any great urgency in its lethargic early course through the courts. The picture changed in the early 1850s.

The temper of the country was short and getting shorter. The compromise of 1850 had not stilled antislavery agitation as expected. Stephen Douglas' Kansas-Nebraka bill, opening to slavery lands which had been closed to it by the Missouri compromise of 1820, revived the question in all its terrifying aspects. Border violence flared. Somebody got the idea that Dred Scott might be the test case which would restore domestic tranquility.

By the time the case reached the supreme court, it was obvious that far more than the slave-or-free status of one Negro was involved. Public pressures mounted for a broad pronouncement that would decide, once and for all, the status of slavery in the territories. These pressures were felt within the court.

The 1856 campaign increased the tensions. The Democrats won with James Buchanan, Pennsylvanian by birth and southern by sympathies, and a popular sovereignty plank that proclaimed the right of a territory's people to seek admission to the union "with or without domestic slavery." Buchanan's victory, over John C. Fremount of the new Republicans, and Millard Fillmore of the dying Whigs, was interpreted widely as an expression of popular will against any restriction on slavery in the territories.

ARGUMENTS BEGIN

The supreme court heard arguments early in 1856 and reargument in December. As imposing an array of legal talent as the country could muster added its collective voice to the demands for sweeping action.

There was no sign of storm in the court's early deliberations. A majority favored abiding by an 1851 decision whereby a slave returned from free to slave territory was declared subject to the laws of the state to which he returned, in this case, Missouri. Indeed, a decision to that effect was written. Then the funny business started.

The veil which traditionally conceals supreme court deliberations prevents absolute knowledge of what happened. But there were strong minds on the court who were unwilling to rest with the inconclusive reinforcement of the 1851 ruling. They pressed for broad action. Another influence was the intention of a Republican minority to speak out in defense of the party's contention that Congress had power to control slavery in the territories. Whatever happened, the court decided to go into the question of congressional power.

Then another stumbling block arose. The court was composed of five justices from the South, four from the North. The five southerners lined up solidly for declaring that Congress had no right to bar slavery from the territories. But the court had been under criticism for lack of balance in its membership for years. It would be embarrassing if a majority of five southern justices should sweep the court into an irrevocable proslavery position.

PRESIDENT STEPS IN

The thing to do, obviously was to bring at least one northern judge to the southern side. The target was Grier of Pennsylvania, as southern in sympathy as Buchanan. But Grier had been under heavy fire for pro-southern rulings and he was reluctant to take the broad step. At this time, Buchanan comes into the picture.

Buchanan had written to Justice Catron of Tennessee early in February. The president-elect wanted to refer to the impending decision in his inaugural address and what could Catron suggest. Catron said nothing had been done as yet, but he would keep Buchanan posted. Now Catron, acting for the southern majority, approached Buchanan. Would he "drop Grier a line, saying how necessary it is" that the court take a positive stand. The president-elect complied, and Grier came around.

The general tenor of the decision caused no great surprise. Advance word of the opinion had filtered through Washington. At least two newspapers had predicted the decision, even to fixing the vote at 7-2 and naming the dissenters. But a complete surprise could have occasioned no greater turmoil.

In its primary finding, the court ruled that Scott was not a citizen, and could not become a citizen because Negroes were "beings of an inferior order." Actually, that disposed of the case. If the court had stopped there, the Dred Scott decision would be buried in dusty records. But it went on: Slaves were property and property had to be protected whether it be slave in Georgia or a mule in Vermont, under the "due process" clause of the fifth amendment. Congress had no power over property rights in territorial domains; therefore, it had no power over slavery. Since the Missouri compromise interfered with property rights, the compromise was unconstitutional.

NORTH OUTRAGED

The decision was greeted with cries of outrage in the North. There were charges, without foundation, that Buchanan and Taney had conspired. One broadside from William H. Seward was so blackening that Taney said, if Seward had been elected president in 1860, he would have refused to administer the oath of office.

In upshot, it is doubtful if the justices of the majority were guilty of more than allowing political considerations, rather than abstract law, to govern their thinking. That is a sorry enough thing, to be sure, and it came near to destroying the court.

The North's antagonism speedily crystallized in refusal to accept the decision. It was a partisan ruling in favor of one section, one party, and one interest; therefore, it had no moral validity. So ran the reasoning.

A few years later, the Civil War made the whole argument academic. Dred Scott? He was set free soon after the supreme court's decision, when he came into possession of a descendant of the family that originally had owned him, away back in Virginia. He got a job as a hotel porter in St. Louis but lived to enjoy freedom only a short time. He died in St. Louis in 1858, and is buried there in a grave which, if all goes as planned, will be adorned with its first marker this year.